

IN THE
United States Court of Appeals
FOR THE ELEVENTH CIRCUIT

IRA KLEIMAN, as the Personal Representative
of the ESTATE OF DAVID KLEIMAN,
Plaintiff-Appellant,
W&K INFO DEFENSE RESEARCH, LLC,
Plaintiff,
—v.—

CRAIG WRIGHT,
Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

SUPPLEMENTAL APPENDIX
VOLUME XV OF XVII

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34/6 37/4 41/24	95/12 95/12 107/10	7/1 7/7 7/16 7/21	7/1 7/7 7/16 7/21
57/5 88/5 88/14	108/8 108/16	8/10 8/21 10/21	8/10 8/21 10/21
116/25	108/17 108/20	11/23 12/1 13/4	11/23 12/1 13/4
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water [2] 118/9	115/10 115/12	17/20 19/12 19/24	17/20 19/12 19/24
118/10	116/4 116/6 116/8	20/11 20/13 23/13	20/11 20/13 23/13
way [16] 9/24 14/6	116/17 117/9	24/2 24/18 24/24	24/2 24/18 24/24
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33/21 35/18 37/18	121/17 121/19	29/3 29/14 30/14	29/3 29/14 30/14
37/20 42/22 42/24	we'll [12] 6/11	32/7 35/4 35/6	32/7 35/4 35/6
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	we're [22] 5/3 7/8	56/1 56/1 57/3	56/1 56/1 57/3

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110/11 110/21	48/5 49/1 59/12	70/1 82/5 83/8
111/2 111/8 116/2	64/14 66/14 68/19	93/19 96/14 98/25
116/8 120/12	107/6	99/5 100/1 104/11
120/20 122/2 122/8	whatever [11]	107/23 111/5
well-known [1]	38/25 58/23 76/7	113/10 114/10
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21/6 21/7 22/23	when [55] 5/18	which [46] 8/15
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23/24 24/22 25/14	17/20 18/20 19/9	10/22 11/4 11/5
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37/1 37/21 44/11	58/24 61/1 61/19	49/25 52/9 62/3
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62/6 73/6 77/4	84/5 89/18 91/1	84/22 91/9 94/6
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60/17 102/23	92/3 92/4 93/25	you're [20] 23/18
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X	95/18 95/21 95/24	42/4 51/12 55/3
X-ray [1] 110/12	98/4 98/4 98/4	55/10 56/9 58/17
Xfinity [1] 118/16	98/18 98/18 98/24	61/19 75/14 77/14
Y	99/4 99/20 100/2	96/11 98/14 98/17
yeah [32] 5/20	100/20 101/10	115/21 116/2
34/23 40/9 41/9	102/14 102/24	116/19 116/22
41/24 42/9 51/25	103/6 103/8 103/14	you've [1] 22/12
52/21 53/14 53/21	103/21 103/23	your [111] 3/12
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57/1 58/12 60/1	104/17 104/19	3/20 3/22 4/7 4/9
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109/10 110/25	106/23 106/25	21/11 21/24 22/12
112/22 115/11	107/4 107/22 109/1	22/22 23/6 24/2
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years [4] 39/1	112/14 112/17	28/6 29/9 32/8
42/14 93/14 95/12	112/22 114/14	32/23 33/25 34/2
Yep [1] 107/25	117/17 117/19	35/18 35/21 36/4
yes [124] 4/15 5/6	118/5 118/19	37/2 37/25 38/18
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22/5 22/8 24/6	121/22 122/1	63/1 68/10 69/4
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32/9 34/1 36/5	6/11 6/17 8/5 8/15	77/10 77/17 78/10
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57/25 61/12 62/10	31/13 76/6 80/9	80/5 88/20 88/24
64/21 68/12 69/5	81/3 81/9 81/14	89/2 89/6 89/11
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77/16 79/20 80/5	102/9 117/18	92/4 92/13 92/17
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UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF FLORIDA

Before The Honorable Beth Bloom, Judge

IRA KLEIMAN, et al.)	
)	
Plaintiffs,)	
)	
VS.)	NO. 18-CV-80176-BB
)	
CRAIG WRIGHT,)	
)	
Defendant.)	
_____)	

Miami, Florida
Thursday, November 18, 2021

TRANSCRIPT OF JURY TRIAL, DAY 12

(AFTERNOON SESSION)

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(APPEARANCES CONTINUED ON FOLLOWING PAGE)

Reported by: James C. Pence-Aviles, RMR, CRR, CSR No. 13059
Official Court Reporter

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AMANDA MARIE MCGOVERN, ESQ.
SCHNEUR ZALMAN KASS, ESQ.

I N D E X

Thursday, November 18, 2021 - Day 12

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1:58 p.m.

P R O C E E D I N G S

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(Proceedings were heard out of the presence of the jury:)

THE COURT: Welcome back.

Is there anything that we need to address at this time?

MR. ROCHE: Your Honor, one issue we just wanted to flag --

THE COURT: Yes. Go ahead and have a seat, then.

Mr. Roche?

MR. ROCHE: -- for -- I understand that Mr. David Kuharcik is going to be called via Zoom around 3:00 o'clock today.

We just wanted to flag ahead of time, under Florida law, Mr. Kuharcik was David Kleiman's accountant. We understand that he was his accountant for roughly 30 years, and -- or excuse me -- dating back to the early 90's.

And just to flag to the Court, to the extent there's any discussions about the investments or the accounting advice that Mr. Kuharcik raised, we intend to invoke the privilege in relation to that -- those discussions.

MS. MCGOVERN: Your Honor, it doesn't look like we're going to be able to call Mr. Kuharcik today. It depends upon how we do, but I understand the objection. We obviously don't agree, and --

(Court reporter requests clarification for the record.)

MS. MCGOVERN: Hi.

I don't believe we're going to actually get to Mr. Kuharcik today because we have a witness after Mr. Andreou. So I believe we're going to end up having this tomorrow morning. But to the extent that there's an issue raised -- and I think it's dependent upon the question asked -- I don't think it will apply.

THE COURT: All right. Well, I think it's clear in sum and substance.

So are you going to be inquiring about any advice that might have been given or discussions related to --

MS. MCGOVERN: No.

THE COURT: Again, I'm not really sure how far you're going into --

MS. MCGOVERN: No, Your Honor.

THE COURT: -- the questioning, but for -- for purposes of -- of the testimony, I just -- I would hope that we can address that ahead of time so we don't have objections while we have a witness on Zoom.

MS. MCGOVERN: I do not intend, Your Honor -- I'll be doing the examination. I don't intend to invade the accountant/client privilege.

MR. ROCHE: Okay. Then we shouldn't have any issues.

THE COURT: Okay. All right. And I do want to let

1 you know I've asked Liz to inquire as to whether the jurors --
2 since tomorrow we are going to be ending early, if the jurors
3 could come in earlier. She has asked about tomorrow, and they
4 are willing to come in at 9:30.

5 Would that be acceptable to -- to both sides?

6 **MR. MESTRE:** Acceptable to us, Your Honor.

7 **MS. MCGOVERN:** I'm sorry. I didn't --

8 **THE COURT:** We'll start tomorrow at 9:30 as opposed to
9 10:00 o'clock.

10 **MS. MCGOVERN:** No problem, Your Honor.

11 **MR. MESTRE:** That's acceptable to us, Your Honor.

12 **MR. BRENNER:** That's fine with the plaintiffs, too,
13 Your Honor.

14 **THE COURT:** Okay. And I've asked her to inquire about
15 next week, and hopefully we'll have some information to provide
16 you at the end of today.

17 **MS. MCGOVERN:** Your Honor, if I can just raise one
18 thing with respect to the point that was just made with
19 Mr. Kuharcik.

20 With respect to the boundaries on the accountant/client
21 privilege in Federal Court, I just want to reserve our right to
22 be able to address an objection that's raised because I think
23 there's going to be a debate about:

24 A. Whether, in fact, I'm asking that question, and I want
25 to be able to address with Your Honor the legal issue as to

1 whether the accountant/client privilege that is being applied
2 to a question I ask actually applies.

3 I think there is a question, and I just want to be able to
4 look at it a little bit more carefully before I make a
5 representation to the Court.

6 But before we call Mr. Kuharcik, I'll certainly state, you
7 know, the specific legal position. But it goes to the issue of
8 really what our -- if any, the boundaries of the
9 accountant/client privilege in Federal Court.

10 **THE COURT:** Okay. Thank you.

11 **MS. MCGOVERN:** All right.

12 **THE COURT:** Okay. Thank you.

13 Okay. Let's bring in the jury.

14 **COURT SECURITY OFFICER:** All rise for the jury,
15 please.

16 (Court and court reporter confer.)

17 **THE COURT:** I did want to let you know that James has
18 been kind enough to work with us this afternoon as opposed to
19 Yvette. If you'd just be kind enough just the first time, so
20 that he can be introduced to you, just to state your name so
21 that the record's clear.

22 Thanks, James.

23 (Proceedings were heard in the presence of the jury:)

24 **THE COURT:** Okay. Welcome back, ladies and gentlemen.

25 Please be seated, everyone. I trust you had a pleasant

1 lunch and ready to get back to work, and we'll continue with
2 the questioning.

3 Mr. Mestre?

4 **MR. MESTRE:** Thank you.

5 And just to introduce myself, as you just asked, I'm Jorge
6 Mestre for Craig Wright.

7 **KIMON ANDREOU,**

8 called as a witness for the Defendant, having been previously
9 duly sworn, testified further as follows:

10 **DIRECT EXAMINATION (RESUMED)**

11 **BY MR. MESTRE:**

12 **Q.** So I want to go back to the text messages.

13 **MR. MESTRE:** Mr. Reed, if you could go to Kimon 30,
14 and if you can highlight the date and then call out the rest of
15 the page.

16 **BY MR. MESTRE:**

17 **Q.** So the date of this text is Thursday, November 26th, 2009.

18 Do you see that?

19 **A.** Yes.

20 **Q.** So there's then a lot of discussion in this case about
21 conversations that took place on Thanksgiving 2009. So here,
22 can you read what -- what Dave says and what you respond?

23 **MR. MESTRE:** Oh. Thank you.

24 Can you publish it to the jury?

25 **THE CLERK:** Is it in evidence?

1 MS. GONZALEZ: Yes.

2 THE CLERK: Okay.

3 BY MR. MESTRE:

4 Q. Okay. Can you read that first line?

5 A. "Gobble, gobble, gobble. Happy T-Day."

6 Q. And then you respond?

7 A. "Gobble, gobble."

8 Q. It was Thanksgiving?

9 A. Yes.

10 Q. 2009?

11 A. Yes.

12 Q. Were you his best friend on November 26th, 2009?

13 A. I don't know if I was his best friend, but I was one of
14 his closest friends, yes.

15 Q. Okay. On that --

16 MR. MESTRE: Can you keep it how it was, please.

17 Thank you, Mr. Reed.

18 BY MR. MESTRE:

19 Q. So on -- on that date, did he tell you that he was working
20 on Bitcoin?

21 A. No.

22 Q. On that date, did he mention a Bitcoin logo?

23 A. No.

24 Q. On that date, did you -- did he tell you he had had a
25 conversation with his brother Ira about Bitcoin?

1 A. No.

2 Q. Did he ever tell you that he had a conversation with his
3 brother Ira about Bitcoin?

4 A. No.

5 Q. So, Mr. Andreou, this -- the exhibit that we've been going
6 through, these texts, are about -- well, I'll tell you, not
7 "about," because they're Bates-numbered -- exactly 200 pages,
8 and they run from 2009 until about -- until exactly April 18th,
9 2013.

10 You produced this; correct?

11 A. Yes.

12 Q. Okay. And these were all the texts that you had --

13 A. Yes.

14 Q. -- with Dave Kleiman?

15 Anywhere in these texts was there any mention of Bitcoin?

16 A. No.

17 Q. Okay. I want to move on from the texts and talk about
18 what you know about Craig Wright. So in other words, now I'm
19 moving from -- well, strike that.

20 So let me ask you a question. Did you ever -- did you
21 ever meet Dr. Wright?

22 A. No.

23 Q. Did Dave Kleiman ever mention Dr. Wright to you?

24 A. Yes, he did.

25 Q. Did he admire him?

1 A. Yes.

2 Q. Did he tell you that he had written that data whitepaper
3 with Dr. Wright?

4 A. Yes.

5 Q. And he was proud of coauthoring with Dr. Wright?

6 A. Yes.

7 Q. During his lifetime, during Dave Kleiman's lifetime, the
8 entire time that you knew him, did he ever tell you that he was
9 working on Bitcoin?

10 A. No.

11 Q. During his lifetime, during the entire time that you knew
12 him, did Dave Kleiman ever tell you that he was mining Bitcoin?

13 A. No.

14 Q. During Dave Kleiman's lifetime and the entire time that
15 you knew him, did he ever tell you that he had formed a
16 business partnership with Dr. Craig Wright to either mine or
17 invent Bitcoin?

18 A. No.

19 Q. Did he ever tell you that he had hundreds of millions of
20 dollars in Bitcoin?

21 A. No.

22 Q. I want to pull up -- and this is already in evidence --
23 Plaintiffs' 767.

24 MR. MESTRE: Not that one. Not that one. There's a
25 redacted 767, Mr. Reed. The redaction's important.

1 He's pulling up -- he's pulling up the redacted version,
2 Your Honor. I apologize.

3 **THE COURT:** All right.

4 **MR. MESTRE:** That's it.

5 So this one is already in evidence, this redacted version,
6 if you can publish that to the jury and to the witness and to
7 counsel and to everybody.

8 (Laughter)

9 **BY MR. MESTRE:**

10 **Q.** So, Mr. Andreou --

11 **A.** Yes.

12 **Q.** -- do you see here -- so is this -- is this your email
13 address?

14 **A.** Yes, it is.

15 **Q.** So this is an email from you?

16 **A.** Yes.

17 **Q.** Okay. So let me take you -- there's been a lot of
18 discussion about this email. Let me take you to the -- the
19 fourth paragraph, where it says, "If all the documents are
20 authentic, then with the addition of the anecdotal information
21 we have from discussions with Dave, all point to Dave and Craig
22 indeed being behind Bitcoin."

23 Now, the anecdotal information that you're talking
24 about -- was that information that you got from Ira Kleiman?

25 **MR. BRENNER:** Objection. Leading.

1 **THE COURT:** Overruled. I'll allow it.

2 **THE WITNESS:** This is information that did not come
3 from me. I didn't -- I don't have firsthand information. So
4 it either came from Ira or from someone else or read online.

5 **BY MR. MESTRE:**

6 **Q.** You never spoke to Dave about Bitcoin?

7 **A.** Never.

8 **Q.** So when you say "anecdotal information," do you mean to
9 say that it was a conversation between you and Dave Kleiman?

10 **MR. BRENNER:** Objection. Leading.

11 **THE COURT:** Sustained.

12 **BY MR. MESTRE:**

13 **Q.** The plaintiff, about this email, Ira Kleiman, was asked,
14 "What is the basis for Kimon's opinion that he was convinced
15 that Craig and Dave are the cocreators of Bitcoin?"

16 And what Ira Kleiman said was that you had had a
17 discussion with Dave Kleiman. Is that true?

18 **A.** No. That is false.

19 **Q.** So --

20 **MR. MESTRE:** If you can remove the pullout.

21 **BY MR. MESTRE:**

22 **Q.** So where it says, "I am convinced Craig and Dave are the
23 cocreators of Bitcoin," what did you mean?

24 **MR. MESTRE:** You don't have to call it out.

25 **THE WITNESS:** What I meant by that was by everything

1 that I had seen at that time and that had been posted online
2 and that I just heard after it hit the news, it seemed very
3 plausible, and I was convinced at the time that they were the
4 co- -- that they were the cocreators of Bitcoin.

5 **BY MR. MESTRE:**

6 **Q.** So that statement is based on information after Dave
7 Kleiman's passing?

8 **MR. BRENNER:** Objection. Leading.

9 **THE COURT:** Sustained.

10 **BY MR. MESTRE:**

11 **Q.** Is that information -- what is that information based
12 upon? What is that opinion based upon?

13 **A.** I had no idea that Dave was -- Dave's name was at all
14 involved with Bitcoin until long after his death and I saw an
15 edit happen on his Wikipedia page talking about it. So
16 everything that I heard or learned about Dave and Bitcoin came
17 after that fact.

18 **Q.** Okay. So do you think that Dave Kleiman could have been
19 the coder behind Bitcoin?

20 **A.** No.

21 **Q.** Do you think that Dave Kleiman could have been the
22 programmer behind Bitcoin?

23 **A.** No.

24 **Q.** Could Dave Kleiman ever have been the
25 hands-on-the-keyboard person behind Bitcoin?

1 **A.** Not doing programming, you know?

2 **Q.** So is it fair to say that this statement was your
3 speculation?

4 **MR. BRENNER:** Objection. Leading.

5 **THE COURT:** Sustained.

6 **BY MR. MESTRE:**

7 **Q.** Were you speculating when you made this statement?

8 **A.** Yes.

9 **Q.** Now, if you go down to the Tuesday, May 17th, email, do
10 you see -- do you see that email address? Who is that from?

11 **A.** That's Ira's email address.

12 **Q.** Ira Kleiman?

13 **A.** Yes.

14 **Q.** When did you meet Ira Kleiman?

15 **A.** I've never met him.

16 **Q.** You've only emailed with him?

17 **A.** And I believe one phone call.

18 **Q.** And that was after Dave died?

19 **A.** Yes.

20 **Q.** Now, Ira says to you, "I think Craig's motives are
21 questionable." Did he -- at this point in time, did Ira
22 believe what Craig was telling him?

23 **MR. BRENNER:** Objection. Calls for speculation.

24 **THE COURT:** Sustained.

25 ///

1 **BY MR. MESTRE:**

2 **Q.** Do you know if Ira at this point had seen a lawyer?

3 **MR. BRENNER:** Objection. Lack of foundation.

4 **THE COURT:** Sustained.

5 **BY MR. MESTRE:**

6 **Q.** Do you know if Ira was contemplating litigation at this
7 point?

8 **MR. BRENNER:** Objection. Lack of foundation.

9 Relevance.

10 **THE COURT:** Sustained.

11 **BY MR. MESTRE:**

12 **Q.** Did Dave Kleiman ever tell you that Dr. Craig Wright had
13 stolen anything from him?

14 **MR. BRENNER:** Objection. Leading.

15 **THE COURT:** I'll allow it. Overruled.

16 **THE WITNESS:** He never mentioned anything like that.

17 **BY MR. MESTRE:**

18 **Q.** Did Dave Kleiman ever tell you that he was developing
19 intellectual property with Dr. Wright?

20 **A.** Not to my recollection, no.

21 **Q.** Is it fair to say that you have absolutely no personal
22 knowledge one way or the other whether Dave Kleiman was
23 involved in the creation or mining of Bitcoin?

24 **MR. BRENNER:** Objection. Leading.

25 **THE COURT:** Overruled. I'll allow it.

1 **THE WITNESS:** I have no factual firsthand knowledge of
2 that, no.

3 **MR. MESTRE:** If I may consult, Your Honor --

4 **THE COURT:** Certainly.

5 **MR. MESTRE:** -- I think I'm finished.

6 I have no further questions, Your Honor.

7 Thank you, Mr. Andreou.

8 **THE COURT:** All right. Cross-examination?

9 **MR. BRENNER:** Thank you, Judge.

10 **CROSS-EXAMINATION**

11 **BY MR. BRENNER:**

12 **Q.** Good afternoon, sir.

13 **A.** Good afternoon.

14 **Q.** Good afternoon.

15 **A.** Good afternoon.

16 **MR. BRENNER:** Mr. Court Reporter, my name is Andrew
17 Brenner, B-r-e-n-n-e-r.

18 **BY MR. BRENNER:**

19 **Q.** Let me just start by getting you -- have you pronounce
20 your last name for you -- for me so I can get it right.

21 **A.** "Andreou."

22 **Q.** "Andreou"?

23 **A.** Yeah.

24 **Q.** Okay. Mr. Andreou, we -- we met once before; correct?

25 **A.** Correct.

1 Q. It was actually -- the defendant had -- had taken your
2 deposition, but I was there. Do you remember that?

3 A. Yes.

4 Q. Okay. You told us that you first met Dave while working
5 at -- it's S Dock or Security Dock?

6 A. It's the same name. It's -- one is the alias of the
7 other.

8 Q. Okay. And as you -- as you just testified to, you and
9 Dave developed a friendship while you were working there;
10 correct?

11 A. Correct.

12 Q. And that friendship lasted after he left -- or after you
13 guys no longer worked together; right?

14 A. Correct.

15 Q. You guys liked to do stuff, you know, going out, hanging
16 out, eating -- eating at restaurants, stuff like that; right?

17 A. Yes.

18 Q. Okay. It's fair to say that although you two were close,
19 neither of you acted as a financial adviser to the other?
20 That's not something you dealt -- that's not -- that was not
21 part of your relationship; right?

22 A. Right.

23 Q. Okay. Now, you said Dave -- I think you used the words --
24 he was one of your closest friends. Dave was a great guy;
25 right?

1 A. Yes.

2 Q. Trusting guy? Honest guy?

3 A. Honest, yeah.

4 Q. He's the kind of guy that you would have and probably did
5 confide in; right?

6 A. Yeah.

7 Q. And if you confided in him -- when you confided in him,
8 you expected that, if it was your desire, he would keep that
9 secret; right?

10 A. Yes.

11 Q. And you never saw any -- you never saw him violate that
12 trust, did you?

13 A. No.

14 Q. You visited Dave, I think, basically every workday for --
15 when he was in the last hospitalization?

16 A. Correct.

17 Q. All right. You were working over at the Port of Miami,
18 and he was in the Jackson area; right?

19 A. Yeah.

20 Q. When you visited Dave, he always had his computer with
21 him; isn't that right?

22 A. Correct.

23 Q. In fact, he was -- he was working on his computers; right?

24 A. Yes.

25 Q. In fact, there were times when you visited him in the

1 hospital where he was running not one but two computers at the
2 same time while sitting on his hospital bed?

3 A. Yes.

4 Q. And these were not just run-of-the-mill computers. They
5 were very powerful laptops; right?

6 A. Yes.

7 Q. And Dave liked powerful laptops; right?

8 A. Yes.

9 Q. He used something called Alienware, which is owned by
10 Dell?

11 A. Now it is, yes.

12 Q. Okay. Now, Dave shared with you some information about
13 things he was doing professionally, but he didn't share with
14 you everything; isn't that correct?

15 A. Correct.

16 Q. You knew -- and you said it on direct examination. You
17 said that -- you told Mr. Mestre that Dave was a very private
18 person. That's a fair description; right?

19 A. Yes.

20 Q. He was very private and didn't like to confide in a lot of
21 other people; right?

22 A. Yes.

23 Q. You did tell Mr. Mestre and the jury that Dave did mention
24 to you that he had been doing work with Dr. Wright; correct?

25 A. Yes.

1 Q. He mentioned to you that they were publishing things
2 together; correct?

3 A. Yes.

4 Q. And the things they were working on were in the technology
5 field; correct?

6 A. Yes.

7 Q. You don't know what else they were working on together;
8 correct?

9 A. Correct.

10 Q. In fact, you told us that it could have been a lot of
11 different things. You just don't know; correct?

12 A. I don't know what I don't --

13 MR. MESTRE: I object to the -- objection.
14 Mischaracterizes the testimony.

15 THE COURT: Overruled. I'll allow it.

16 BY MR. BRENNER:

17 Q. That's correct, isn't it, sir?

18 A. I don't know what I don't know. That's correct.

19 Q. You don't know what you don't know. You know he's the
20 kind of guy that didn't tell you everything. You don't know
21 what he didn't tell you; right?

22 A. Yeah.

23 Q. Okay. After leaving S Dock, you went -- well, tell me,
24 did you immediately go to Royal Caribbean? Because I know you
25 were working there at some point.

1 **A.** I stayed for another company for about a month, month and
2 a half, and then I jumped over.

3 **Q.** And when did you work at Royal Caribbean?

4 **A.** Started in September of 2006.

5 **Q.** Until when?

6 **A.** Until May of this year.

7 **Q.** So just recently -- you just left Royal Caribbean.

8 Your boss at Royal Caribbean was a woman named Cristina
9 Mestre Quintero; right?

10 **A.** Correct.

11 **Q.** And Ms. Quintero --

12 **MR. MESTRE:** Objection. Relevance.

13 **MR. BRENNER:** I'm just establishing there's some
14 relation between Counsel and the witness.

15 **THE COURT:** All right. Over- --

16 **MR. MESTRE:** Your Honor, can we have a sidebar?
17 Totally inappropriate, Your Honor.

18 **THE COURT:** Come on forward. Come on forward.

19 (The following proceedings were heard at the sidebar:)

20 **THE COURT:** All right. So --

21 **MR. BRENNER:** I'm sorry. I don't have my mask. I'm
22 sorry, Judge.

23 **MR. MESTRE:** It's absolutely irrelevant. It is silly.
24 I have three sisters. This -- one of them happened to work at
25 Royal Caribbean.

1 **THE COURT:** Okay.

2 **MR. MESTRE:** Worked with him for some time.

3 **THE COURT:** Okay.

4 **MR. MESTRE:** Never met him, don't know him, never
5 heard of him, I mean, never spoke to him in my life, never
6 heard of him in my life. And to use that my sister happens to
7 work at Royal Caribbean to impeach this witness's credibility
8 is 403, if there ever was, and I'm disappointed that Mr.
9 Brenner is taking this tact.

10 **THE COURT:** Okay. Response?

11 **MR. BRENNER:** Well, I had no -- I had no idea that
12 this would be such a sensitive --

13 **THE COURT:** Well, is there any evidence that this was
14 the reason why Mr. Andreou came to --

15 **MR. BRENNER:** Well, here's what I know.

16 **THE COURT:** -- to court or that he gave favorable
17 testimony one way or the other?

18 **MR. BRENNER:** I'll tell you what the evidence is.

19 **THE COURT:** Because I may not -- there's a wide net
20 when it comes to bias, but --

21 **MR. BRENNER:** Right. Here's all --

22 **THE COURT:** -- there's a limit.

23 **MR. MESTRE:** I also have cousins, uncles, aunts.
24 Please.

25 **MR. BRENNER:** Okay. Here's all I'm doing.

1 The next question is going to be "Is she the sister of Mr.
2 Mestre?"

3 He's going to say, "Yes."

4 And I'm going to say, "After you" -- "you had a meeting
5 with the lawyers? You sat down with them for, you know, for an
6 hour and a half?"

7 I'll go through the last questions, that she's his sister,
8 they met up. That's it.

9 **MR. MESTRE:** I wasn't -- I wasn't there. I apologize,
10 Your Honor.

11 **THE COURT:** Okay. Unless there's a good-faith belief
12 that the sister is the reason he's giving favorable testimony
13 to the defense -- well, I don't want to limit you on bias.

14 **MR. BRENNER:** Well, it just seems --

15 **THE COURT:** I just -- I want to understand the
16 parameter.

17 **MR. BRENNER:** Yeah. It seems like a reasonable
18 inference. It's a reasonable bias question to show that the --
19 when he's meeting with him, discussing the case, his boss is
20 the sister of the lawyer. I think the jury can take something
21 from it or not take something from it. It's not prejudicial.
22 I don't know why --

23 **MR. MESTRE:** It is completely prejudicial because it's
24 a bias that's not real. It's invented. It's 403. I wasn't at
25 that meeting that you're talking about. I haven't spoken to

1 this man until 30 days -- it's beyond the pale.

2 **MR. BRENNER:** Yeah. He obviously knows when he's
3 meeting the lawyers -- the firm's name is Rivero Mestre
4 obviously.

5 Your Honor, I obviously did not think this was even --

6 **THE COURT:** Right.

7 **MR. MESTRE:** It's inappropriate.

8 **MR. BRENNER:** It's one more question.

9 **THE COURT:** It's not 403 because it's bias. So if
10 that's the extent of your question --

11 **MR. BRENNER:** The next question -- I promise you, it's
12 one more question.

13 (Proceedings were heard in the presence of the jury:)

14 **THE COURT:** All right. You may continue.

15 **MR. BRENNER:** Mr. Court Reporter, are you set back up?

16 **THE REPORTER:** I am.

17 **BY MR. BRENNER:**

18 **Q.** Okay. The -- your boss named Cristina Mestre Quintero --
19 she was the -- she is the sister of Mr. Mestre; correct?

20 **A.** Yes.

21 **Q.** Okay. Now, you had a meeting before your deposition.

22 Okay. You had a meeting with Dr. -- Dr. Wright's lawyers.
23 Do you recall that?

24 **A.** Yes.

25 **Q.** I think -- and correct me if I'm wrong. I think it was

1 Mr. Rivero that you met with.

2 A. Yes.

3 Q. Any other lawyers?

4 A. Brian Paschal, I believe.

5 Q. Brian Paschal.

6 Okay. And you had the meeting at Royal Caribbean;
7 correct?

8 A. In the cafeteria, yes.

9 Q. Okay. You met for an hour and a half, I think my notes
10 say. Does that sound about right?

11 A. That sounds right.

12 Q. Okay. At that meeting, you -- Dr. Wright's lawyers,
13 Mr. Rivero and Mr. Paschal, asked you a bunch of questions;
14 right?

15 A. Yes.

16 Q. And among the questions they asked you was -- one was
17 Dave -- was Dave involved in Bitcoin. Do you remember them
18 asking you that?

19 A. Yes.

20 Q. And similarly, whether Dave could have created Bitcoin;
21 right?

22 A. Yeah.

23 Q. And this meeting took place in 2000 -- I think it was
24 2019. Does that sound right?

25 A. Could be. I don't remember.

1 Q. Certainly after that email we just looked at; right?

2 A. Yes.

3 Q. Okay. So after that, you have a meeting with them. They
4 ask you about whether Dave was involved in Bitcoin and whether
5 Dave could have created Bitcoin. So we're on the same page?

6 A. Yeah.

7 Q. Okay. And what you told them at that time is "Yeah, it's
8 possible Dave could have helped created Bitcoin," didn't you?

9 A. Yes.

10 Q. Okay. Now, I want to go back up to the exhibit we were
11 just looking at, which was P-767.

12 MR. BRENNER: The redacted version, please, Ms. --
13 Ms. Vela.

14 BY MR. BRENNER:

15 Q. And here's what I'd like you to do.

16 MR. BRENNER: Can we -- we're good?

17 Okay. Thank you.

18 BY MR. BRENNER:

19 Q. Here's -- here's what I want to do. I want to start at
20 the paragraph that says, "If all documents..." and I want to go
21 through the words "anecdotal" -- "anecdotal information."

22 A. Okay.

23 MR. BRENNER: Okay. So let's get that highlighted, if
24 we could. No, up -- up a little bit. No, just through
25 "anecdotal information."

1 Okay. Just -- okay. One more word.

2 Perfect. Thank you, Ms. Vela.

3 **BY MR. BRENNER:**

4 **Q.** Okay. Do you see that?

5 **A.** Yes.

6 **Q.** So that's where your discussion with Mr. Mestre just was;
7 right?

8 **A.** Yes.

9 **Q.** It was about anecdotal information?

10 **A.** Yes.

11 **Q.** And you said, "I don't know. They had a discussion with
12 Ira. I don't" -- "I have no idea what the anecdotal
13 information was"; right?

14 **A.** Yeah. I don't recall what --

15 **Q.** Okay.

16 **MR. MESTRE:** Objection. Mischaracterizes the
17 testimony.

18 **BY MR. BRENNER:**

19 **Q.** Okay. Let's read the --

20 **THE COURT:** Overruled. I'll allow it at this point.

21 **BY MR. BRENNER:**

22 **Q.** Let's read the rest -- the next four, five -- one, two,
23 three, four, five, six words.

24 You know where the anecdotal information came from, sir,
25 don't you?

1 **A.** It says from discussions with Dave but not my discussions
2 with Dave.

3 **Q.** Oh. So you're writing to Ira that some other people, not
4 you, had discussions with Dave where Dave was saying he was the
5 creator of Bitcoin? That's what this email means?

6 **A.** Yeah. I never spoke to Dave about Bitcoin.

7 **Q.** Okay. So explain -- so when you write here in the email,
8 "If all the documents are authentic, then with the addition of
9 the anecdotal information, we" -- you're talking about you;
10 right? You're part of "we"?

11 **A.** Okay.

12 **Q.** -- "we have from discussions with Dave."

13 So the word "We have from discussions with Dave" -- the
14 "we" there is "we" meaning everyone but you? Is that your
15 recollection now?

16 **A.** I am not changing what I'm saying. I never spoke to Dave
17 about Bitcoin, and the "we" was provided to me or that I read
18 or that we found. When I wrote this email, I wasn't writing it
19 thinking that it would be evidence admitted to court.

20 **Q.** Right.

21 **A.** So I --

22 **Q.** Right.

23 **A.** I wasn't trying to choose my words to be perfect.

24 **Q.** Okay. So as you now read -- the email you wrote -- would
25 it be fair to say as a general matter, as a general matter,

1 that you were -- your memory of events is better closer in time
2 to the event? So for example -- let me make it -- let me try
3 to simplify it.

4 If -- if you had -- if you had dinner at a restaurant --
5 okay? Just a regular dinner.

6 A. Uh-huh.

7 Q. You're out with your friend, your -- I don't know your
8 personal -- you're out with someone socially; right? And you
9 had dinner with them, and you got home from dinner, and someone
10 said to you, "What did you have for dinner tonight?" You're
11 probably going to know that; right?

12 A. Yeah.

13 Q. Right?

14 Not a hugely memorable event, but it's right then; right?

15 A. Correct.

16 Q. Now, if someone asks you a week later, you'll be less
17 likely to know what you had then -- right? -- for that
18 particular dinner if it wasn't anything special?

19 A. Most likely.

20 Q. Right. And as we get further in time, our memories get
21 hazier --

22 A. Most likely.

23 Q. -- right?

24 So you would agree with me that your memory of these
25 events regarding whether or not you've had discussions with

1 Dave about Bitcoin would be fresher in your mind in 2016 than
2 they would be in a courtroom in 2021? Can we at least agree on
3 that?

4 **A.** It's more likely -- since it was closer, it's more likely
5 that I remember more then than I do now.

6 **Q.** Right. And you -- you would at least agree with me that
7 maybe it was inartful, but what you wrote in 2016 was that you
8 had discussions with Dave which led you to believe that he was,
9 in fact, behind the creation of Bitcoin. That's what the words
10 say?

11 **MR. MESTRE:** Objection. That's not what the words
12 say. The document speaks for itself.

13 **THE COURT:** The objection is overruled. I'll allow
14 it.

15 **THE WITNESS:** I don't have any memory of speaking
16 about Bitcoin with Dave. So I can't say that --

17 **BY MR. BRENNER:**

18 **Q.** Right. As you sit here today in 2021, you told Mr.
19 Mestre, you told the jury you don't remember having discussions
20 with Dave about Bitcoin? You made that crystal-clear?

21 **A.** Yeah.

22 **Q.** And all I'm saying is: Can we at least agree that the
23 words that you put down on paper in 2016 in an email is not
24 consistent with that, meaning that at that point you remembered
25 having discussions with Dave about the creation of Bitcoin?

1 That's what the words say; right?

2 **A.** I'm not sure I agree. I'm not saying that I had
3 discussions here.

4 **Q.** Okay.

5 **A.** So that's what I'm --

6 **Q.** And that's because the word "we" is talking about someone
7 other than you?

8 **A.** No. It's like "we" --

9 **MR. MESTRE:** Objection. Argumentative.

10 **THE WITNESS:** That doesn't necessarily mean that I
11 asked this question.

12 **THE COURT:** Sustained.

13 **BY MR. BRENNER:**

14 **Q.** Okay. And then if we could go -- you didn't just leave it
15 there. So it wasn't, like, "Well, I heard" -- the way you made
16 it sound today is "Well, I heard some things."

17 **A.** Uh-huh.

18 **Q.** "I read some things. I wasn't really sure." That's not
19 what you said in 2016, is it, sir?

20 **MR. MESTRE:** Objection. Argumentative.

21 **THE COURT:** Sustained.

22 **BY MR. BRENNER:**

23 **Q.** Okay. Let's look at what you said in 2016, if we can go
24 down just two more paragraphs. You wrote, "I am convinced that
25 Craig and Dave are the cocreators of Bitcoin."

1 That's what you wrote in 2016?

2 **A.** Yes, I did.

3 **Q.** That's what you believed in 2016?

4 **A.** Yes, I did.

5 **MR. BRENNER:** Okay. Your Honor, may I consult with
6 counsel -- my colleagues?

7 **THE COURT:** Certainly.

8 **MR. BRENNER:** Mr. Andreou, I have no further
9 questions. Thank you for your time.

10 **THE COURT:** All right. Any redirect?

11 **MR. MESTRE:** Your Honor, no redirect.

12 Thank you, Mr. Andreou.

13 **THE COURT:** All right. Ladies and gentlemen, you have
14 the right to ask Mr. Andreou questions. Does anyone have any
15 questions for the witness? If so, just raise your hand just so
16 I can give you the time to write your question. Are there any
17 questions for the witness?

18 All right. Seeing no hands raised, is Mr. Andreou
19 excused?

20 **MR. MESTRE:** Yes, Your Honor.

21 **THE COURT:** On behalf of the plaintiffs?

22 **MR. BRENNER:** Yes. Yes, Your Honor.

23 **THE COURT:** All right. Thank you, sir. You are
24 excused.

25 And the defendant's next witness?

1 **MR. MESTRE:** The defense calls Carter Conrad, please.

2 Okay. Okay. Got it.

3 **THE COURT:** Hi. Good afternoon, sir.

4 **THE WITNESS:** Good afternoon.

5 **THE COURT:** If you'll step forward right over here,
6 sir.

7 Let me ask that you remain standing. Raise your right
8 hand to be placed under oath.

9 **THE CLERK:** Please raise your right hand.

10 **CARTER CONRAD,**
11 called as a witness for the Defendant, having been duly sworn,
12 testified as follows:

13 **THE WITNESS:** I do.

14 **THE CLERK:** Thank you.

15 **COURT SECURITY OFFICER:** Right here.

16 **THE COURT:** Go ahead and have a seat, sir.

17 Mr. Conrad, consistent with CDC guidelines, if you are
18 fully -- fully vaccinated and you feel comfortable, you are
19 permitted to take your mask off while you're testifying.

20 **THE WITNESS:** Thank you, Your Honor.

21 **DIRECT EXAMINATION**

22 **BY MR. MESTRE:**

23 **Q.** Good afternoon.

24 Can you --

25 **A.** Good afternoon.

1 Q. -- please describe your educational background for the
2 jury, please.

3 THE COURT: If I can just have the witness state his
4 full name for the record, please.

5 MR. MESTRE: Oh. I thought he had. I apologize.

6 BY MR. MESTRE:

7 Q. Please state your full name for the record.

8 A. Carter Conrad, C-o-n-r-a-d.

9 Q. And can you briefly describe your educational background
10 for the jury?

11 A. So my formal education is some college with no degree. I
12 have several security and computer forensic certifications.

13 Q. And can you briefly describe your work background?

14 A. So I've been in the security business since the early
15 90's. In the early 2000's, that changed into verification of
16 data, aggregation of data and verification. And then in the
17 mid-2000's, that changed into a computer forensics practice.

18 Q. And did there come a time where you met David Kleiman?

19 A. Yes.

20 Q. And when was that?

21 A. That was in the mid-2000's. I don't know specifically,
22 somewhere between 2006 and 2007.

23 Q. And had you heard of him before you met him?

24 A. I did, yes. We held a couple of certifications that were
25 similar in nature, and I was acquainted with him through

various list servers that -- those certifications.

Q. And did you have an opinion about him?

A. Yes. I -- he was highly respected.

Q. And did there come a time where you developed a friendship?

A. Yes.

Q. And how did that happen?

A. We had some verbal correspondence and email correspondence for some time. Dave then invited me, I believe, again, in 2007 -- maybe it was 2008, around that timeframe -- to attend a presentation that he was part of at FIU, University -- Florida International University here in Miami-Dade.

Q. What type of presentation was it?

A. It was an FBI/InfraGard presentation. So that's an FBI-sponsored organization where individuals that are public sector law enforcement and private sector are -- participate in some training.

Q. Was that the first time you met him in person?

A. Yes, it was.

Q. Okay. After that first time you met him, how is it that you developed a friendship with Mr. Kleiman?

A. Well, in addition to some of the same certifications, it was interesting that when I first met him that day, we had the exact same phone. It was a phone that folded out with a key -- keyboard. It wasn't just -- I noted it. The backpack on his

1 wheelchair was the exact backpack that I used to carry around a
2 computer. It just started a friendly conversation, and that
3 developed into a friendship.

4 Q. Would you do social things with him?

5 A. Not a great deal. There was times when we'd go out to eat
6 or different things, but most of our activity was related to
7 computer forensics and the work that that involved.

8 Q. So how often would you speak to him?

9 A. I'd speak to Dave on a daily basis, yeah.

10 Q. Would it be fair that you even spoke to him multiple times
11 a day?

12 A. Yes.

13 Q. Would it also be fair to say that you spoke to him about a
14 variety of subjects?

15 A. Yes.

16 Q. Personal and work?

17 MR. FREEDMAN: Objection. Leading.

18 THE COURT: I'll allow it. Overruled.

19 THE WITNESS: I'm sorry.

20 THE COURT: You may answer the question, sir.

21 THE WITNESS: So primarily work-related, but there was
22 some personal aspects, personal conversations.

23 BY MR. MESTRE:

24 Q. So after this friendship developed and after you met him,
25 did there come a time where you started working on professional

1 engagements together?

2 **A.** So initially -- yes is the answer. Initially, it would be
3 jobs that he would have gotten, you know, through his own
4 activity. If it was an acquisition of computers that needed to
5 be done in a work environment, it was difficult for him to
6 reach under the desk, unplug the cables, that sort of thing.
7 So I would assist him in those collections, just that part of
8 it.

9 He would perform the preservation of the hard drives. He
10 would do the analysis. I was sort of in, you know -- in a way
11 his legs to just help assist him with that collection.

12 **Q.** When you say you were his legs, do you mean outside of the
13 house or in the house?

14 **A.** Well, what I was describing would be a work environment
15 like an office. Say there was ten or 15 computers that need to
16 be harvested as far as the data, forensically imaged. So if
17 those computers were in an awkward area where it would be
18 difficult to reach under a desk or in some other area, a server
19 room that was small, where access was limited -- he was in a
20 wheelchair.

21 So I would assist in helping him to get access to those
22 devices.

23 **Q.** Did you ever visit him at home in addition to the setting
24 you were just describing?

25 **A.** Yes.

1 Q. And did you do the same kind of thing for him at home?

2 A. At home, he was fairly self-sufficient from that
3 standpoint. He had networked his computers so that he could
4 get remote access to those.

5 Q. Do you know if he had help at home because of his physical
6 limitations?

7 A. I know that there was an individual that worked in the
8 information technology networking and support group. His name
9 was Jodie, and he's also deceased at this point. Jodie would
10 assist him in various -- various things. I don't know the
11 scope of all of them, though.

12 Q. Did you know Jodie?

13 A. I only spoke to him on the phone. I was more acquainted
14 with the owner of the business that he worked for.

15 Q. And who was that?

16 A. His name is Robert Bell. He goes by Bob, Bob Bell.

17 Q. Do you know if Jodie ever stayed over at Dave Kleiman's
18 house in order to help him?

19 A. I believe so, but I couldn't -- I can't give an
20 affirmative answer to that. I just believe so.

21 Q. What -- what was the -- other than what you've described,
22 going for the cables, you know, working the hard drives and
23 different things that you described, what -- what other type of
24 help did you observe that Dave Kleiman needed in his work life?

25 A. There was a conference in 2009, is my recollection, in

1 Orlando, the CEIC conference, which was a vendor conference.
2 EnCase Forensic Software was the sponsor of that conference.
3 Dave had a presentation there, and he asked me for some
4 assistance relative to, you know, that presentation.

5 **Q.** Is it fair to say that you would help him physically so
6 that he could fulfill some of his responsibilities on these
7 engagements that you had together?

8 **A.** Yes.

9 **MR. FREEDMAN:** Objection. Leading.

10 **THE COURT:** Overruled. I'll allow it.

11 **THE WITNESS:** Yes, that's -- that -- that's fair.

12 **BY MR. MESTRE:**

13 **Q.** Okay. So did there come a time where you created a
14 business partnership with Dave Kleiman?

15 **A.** Yes.

16 **MR. FREEDMAN:** Objection. Leading.

17 **THE COURT:** Overruled. I'll allow it.

18 **THE WITNESS:** Yes.

19 **BY MR. MESTRE:**

20 **Q.** What was that business called?

21 **A.** Computer Forensics, LLC.

22 **Q.** And why was Computer Forensics, LLC created?

23 **A.** My recollection is that it was sometime -- January or
24 February of 2012, so almost ten years ago. And at that point,
25 Dave had had -- had been in the hospital. He was continuing to

1 attract inquiries as to additional work.

2 I was assisting him with that. I was performing some of
3 the work. He would refer it out. And depending on, you know,
4 the nature of the engagement, I would either just bill it out
5 for myself or I would bill it out and we would do some sort of
6 sharing for the fee.

7 So that started around 2010, is my recollection, when Dave
8 was in the hospital. This ongoing business generation was --
9 continued to occur, and I approached Dave, and I said,
10 "It's" -- "it's really time for us to formally, you know,
11 create an entity." And we did that, again, early in 2012.

12 Q. Was Dave Kleiman excited about it?

13 A. Yes, I believe -- I believe so.

14 Q. Were you excited about it?

15 A. I was -- I was certainly excited.

16 Q. Was Dave Kleiman dedicated to it?

17 A. Yes.

18 Q. Do you remember whether you had a domain name?

19 A. Yes.

20 Q. Do you remember who found it?

21 A. I believe I did.

22 Q. And how did Dave -- did you ultimately tell Dave Kleiman
23 that you had found a domain name?

24 A. Immediately upon knowing that Computer Forensics, LLC was
25 available -- ComputerForensicsLLC.com was available, we

1 immediately registered the name, is my recollection, and we
2 formed the LLC subsequent to that -- directly subsequent to
3 that.

4 **Q.** How did he respond when you told him you found this domain
5 name?

6 **A.** It was with some excitement. I -- I was genuinely
7 surprised that in 2012, a domain that so specifically
8 identified the scope and the type of work that we were doing
9 would be available.

10 And from the standpoint of keyword-searching and other
11 ways of -- of -- of generating interest in the business, I
12 thought it was advisable that we move on it as quickly as
13 possible.

14 **Q.** And during the time that you had Computer Forensics, were
15 there engagements that you had to take over for Dave?

16 **A.** I don't recall with clarity that. Again, we're talking
17 about almost ten years ago now at this point. But I will say
18 to you that the business that was generated went into the
19 funnel of -- of the business proper of Computer Forensics, LLC
20 as -- as an entity.

21 **Q.** Do you know if there were times when -- when Dave wasn't
22 able to complete the engagement that maybe Patrick would take
23 over the engagement?

24 **A.** So, again, I don't have clear recollection of that, but I
25 will say to you Patrick came into the business later in the

1 year in 2012. So it was originally myself and David Kleiman
2 that formed the LLC.

3 If there was any -- if there was any action within an
4 engagement, a split of -- of whatever those fees were would
5 occur. And each person, based on the percentage of the work
6 that they did, would receive those fees after the company
7 received its -- that's the way it was structured, that the
8 company received a percentage off the top for overhead.

9 And then subsequent to that, each -- each analyst or each
10 examiner would -- would have the proceeds after that.

11 Q. So let me -- let me show you what's -- and I think this is
12 already in evidence, D-40.

13 MR. MESTRE: Is that in evidence?

14 MS. GONZALEZ: It is.

15 MR. MESTRE: Okay. So we can publish it to the jury.

16 BY MR. MESTRE:

17 Q. So I'm just going to show you --

18 THE CLERK: Is it in evidence?

19 THE COURT: Hold on one second. Let me just --

20 MR. MESTRE: Hold up.

21 THE COURT: It's in evidence, Mr. Mestre?

22 MR. MESTRE: I'm told it is.

23 THE COURT: Yes, it is.

24 MR. MESTRE: I believe it is.

25 THE COURT: It is.

1 **MR. MESTRE:** Thank you.

2 **BY MR. MESTRE:**

3 **Q.** So, Mr. Conrad, in this -- this is an email from Dave to a
4 whole bunch of folks, Maren Sheppard. And you see that it
5 says, "It's with deepest regrets that I have to inform you I am
6 unable to continue to assist as the expert in the matter of
7 *U.S. v. Garcia* for medical reasons." And then it goes on, and
8 then, you know, lower, it says, "But Patrick is available."

9 Does this refresh your recollection as to whether or not
10 Patrick would help him with engagements he wasn't able to
11 perform?

12 **A.** Well, I don't have direct recollection, and I assume this
13 to be authentic. I have no reason to think it's not authentic.
14 This is not -- it certainly would be accurate, you know, my
15 recollection, although I don't distinctly remember this case.

16 **MR. MESTRE:** You can take that down.

17 **BY MR. MESTRE:**

18 **Q.** Would you bill by the hour on engagements?

19 **A.** Most of the time. Sometimes there was a flat fee.

20 **Q.** Okay. When you billed -- when you -- when Computer
21 Forensics would bill by the hour, would you each keep track of
22 the time that you spent?

23 **A.** Yes.

24 **Q.** Okay. And you've already said you would -- you developed
25 a friendship with Dave Kleiman. So in your business

1 partnership with him, even though you were friends, did you
2 have an operating agreement?

3 **A.** We did.

4 **Q.** Okay. I'm going to show you D-005. This one, I know, is
5 in evidence. And if you could go -- it's a complaint, but if
6 you can go to the very last page of the complaint.

7 So do you recognize this document?

8 **MR. MESTRE:** Maybe call it out and make it bigger.
9 It's hard to see.

10 **THE WITNESS:** Yes, I do.

11 **BY MR. MESTRE:**

12 **Q.** What is this document?

13 **A.** It was the operating agreement that I created that -- this
14 one has Patrick's signature on it, but this was -- would be
15 mostly duplicative of the one that was between -- that was with
16 Dave and I originally. And then subsequent, again, on
17 February 2013, Patrick was added to it.

18 **Q.** Okay. So I want to go through this a little bit.

19 In this operating agreement, did it include a description
20 of the owners of Capital Forensics? I say "Capital," but I
21 mean "Computer."

22 **A.** So yes. The first line there says, "Computer Forensics,
23 LLC shall be owned equally by Carter Conrad, Dave Kleiman, and
24 Patrick Paige."

25 **Q.** Did it define the managing member of Computer Forensics?

1 **A.** So each individual shall be a managing member of Computer
2 Forensics, LLC.

3 **Q.** Did it define the percentage ownership that each of you
4 had?

5 **A.** So 33.33 percent interest of Computer Forensics.

6 **Q.** Did it define the way that revenues would be distributed?

7 **A.** Yes, it did.

8 **Q.** Did it set forth how expenses were going to be paid?

9 **A.** I believe so.

10 **Q.** I'll take you to it. There you go.

11 It deals with expenses?

12 **A.** Yes. So the -- the 20 percent, as I described previously,
13 off -- off the top. So any gross that would come in -- if it
14 was a hundred dollars, \$20 of that gross would go to the
15 company to be used for overhead and expenses. The other
16 80 percent would be designated to whichever member or members
17 were part of that project.

18 **Q.** Okay. Did it -- did this operating agreement also provide
19 for the ownership of intellectual property?

20 **A.** Yes, it did.

21 **MR. MESTRE:** Okay. You can take that down, Mr. Reed.

22 **BY MR. MESTRE:**

23 **Q.** So I want to keep talking about the business and the
24 formalities that you all had in the business beyond the
25 operating agreement.

1 So did Computer Forensics have an accountant?

2 **A.** Yes, it did.

3 **Q.** Who was that accountant?

4 **A.** David Kuharcik, who's a CPA.

5 **Q.** Was Dave Kleiman involved in choosing that accountant?

6 **A.** Yes. David Kuharcik had worked with -- with Dave Kleiman
7 previously, but there was a discussion between us. I
8 interviewed someone that I knew for the position. Ultimately,
9 the company decided on Mr. Kuharcik.

10 (Defendant's Exhibit D-41 marked for identification)

11 **BY MR. MESTRE:**

12 **Q.** I'm going to show you and not the jury -- I don't believe
13 this is in evidence -- Defendant's 41.

14 Mr. Conrad, do you recognize this document?

15 **A.** I don't recognize it directly, but it seems like something
16 that would have been produced as part of the business, yes.

17 **Q.** Do you recognize -- let's start at the -- these -- these
18 emails go in reverse order. So why don't we go to the back.

19 Do you recognize the first email as an email from Dave to
20 David Kuharcik?

21 **A.** Again, while I don't recognize it directly, it's -- it's
22 very much consistent with an email that Dave would have sent.
23 The address in West Palm Beach is the corporate address that we
24 were using at the time.

25 **MR. MESTRE:** Okay. I -- Your Honor, I would move to

1 admit D-41 into evidence.

2 **MR. FREEDMAN:** Objection, Your Honor. Foundation and
3 authentication.

4 **THE COURT:** Overruled. It will be admitted into
5 evidence.

6 (Defendant's Exhibit D-41 received in evidence)

7 **MR. MESTRE:** Okay. So if we can go to the -- and you
8 can publish it to the jury, Mr. Reed, please. So the second
9 page.

10 **BY MR. MESTRE:**

11 **Q.** So the earliest email says, "Hi, David." And this is an
12 email from Dave to David, two Daves, so from Dave to David
13 Kuharcik. And you see it's Dave Kleiman saying first, "What
14 would your annual fees be..." That's the first part of the
15 first sentence.

16 Is that Dave Kleiman asking Mr. Kuharcik what he would
17 charge?

18 **A.** Yes.

19 **Q.** Okay. And then later in that sentence, he says, "With
20 annual gross expected to be somewhere between 150 and 300 for
21 the next two years."

22 Do you see that?

23 **A.** I do, yes.

24 **Q.** Is that an estimate of revenues by David Kleiman?

25 **A.** Yes, it is.

1 **MR. MESTRE:** Okay. And then if you go to the next
2 paragraph -- the next paragraph, Mr. Reed, the 80/20 percent.

3 **BY MR. MESTRE:**

4 **Q.** Do you see that, Mr. Conrad?

5 **A.** I do, yes.

6 **Q.** So is that an explanation -- an explanation of how the
7 business was going to split revenues and expenses to
8 Mr. Kuharcik?

9 **MR. FREEDMAN:** Objection. Leading.

10 **THE COURT:** Sustained.

11 **THE WITNESS:** Yes.

12 **BY MR. MESTRE:**

13 **Q.** What is that?

14 **A.** I'm sorry.

15 **THE COURT:** Yeah.

16 **MR. MESTRE:** I'll rephrase.

17 **THE COURT:** Not a problem. Just rephrase, please.

18 **MR. MESTRE:** Apologies.

19 **BY MR. MESTRE:**

20 **Q.** What is -- what is the 80/20?

21 **A.** 80/20 is a representation of the gross revenue and how
22 80 percent would go to the individual or -- or individuals that
23 were working on the project. 20 percent would stay with the
24 company for overhead and expenses.

25 **Q.** Okay. So let me take you to the next email in the chain

1 now, which is on Thursday, January 24th. And there, Dave
2 Kleiman is sending an email to you and Patrick, and he says, "I
3 have personally known since 1990." So "This is what I sent to
4 the CPA. I've personally known him since 1990."

5 Was that a factor in choosing Mr. Kuharcik?

6 **A.** I believe so, yeah.

7 **Q.** Okay. Let's go to the next email above that -- or the
8 next part of the chain. The Thursday, January 24th email,
9 exactly. So let's take this one by one.

10 So on Paragraph -- in Paragraph 2, it says, "Even though
11 we're an LLC, we can elect" -- "we can elected [sic] to be
12 treated as a corporation or an S corporation for tax purposes."

13 Do you see that?

14 **A.** I do.

15 **Q.** Do you know what that means?

16 **A.** So there's some flexibility -- and I'm not an accountant.
17 So this is the --

18 **Q.** Me neither.

19 **A.** -- layman's version. There is some flexibilities with a
20 Limited Liability Company in the State of Florida. The way the
21 internal structure -- you can be -- for your tax returns, you
22 can be a corporation but still be an LLC. It's a little beyond
23 my grasp of accounting, but my recollection is that we chose to
24 use that flexibility for filing purposes.

25 **Q.** Was -- was Dave Kleiman taking charge of communicating

1 with the accountant about these issues?

2 **A.** Taking charge? I don't know how to answer that. But
3 certainly in this case, he was -- he had direct communication,
4 and he was distributing that information to Patrick and myself.

5 **Q.** Did Computer Forensics file tax returns?

6 **A.** Yes, sir.

7 **Q.** And that was important?

8 **A.** It was important?

9 **Q.** It's the law?

10 **A.** Yes.

11 **Q.** Okay. Was Computer Forensics registered to do business in
12 Florida?

13 **A.** Yes.

14 **Q.** Okay. So I talk to you now a little bit about Dave's --
15 Dave Kleiman's illness.

16 So do you know that there came a time where Dave Kleiman
17 was hospitalized?

18 **A.** Yes.

19 **Q.** Okay. Did you visit Dave Kleiman in the hospital?

20 **A.** I did.

21 **Q.** How many times did you visit?

22 **A.** I don't have an accurate number, but there was certainly a
23 period of time when I would see him weekly. I visited him. He
24 was initially at the VA Hospital in Palm Beach County north of
25 here, and then he was moved to the VA in Miami because they

1 have a spinal cord injury unit. And there was a period of
2 time -- once he moved to Miami, I would see him at least
3 weekly.

4 Q. Would you -- on these visits, would you -- would you talk
5 to him about business issues?

6 A. Yes.

7 Q. Would you talk to him about -- about personal issues?

8 A. Yes.

9 Q. Random things? I guess -- here's what I'm getting at.
10 Would you -- would you -- would you talk about a lot of
11 different things with him?

12 A. Yes.

13 Q. Okay. I'm going to talk about Bitcoin now, and I'm
14 focused on his lifetime, what actually happened during Dave
15 Kleiman's lifetime, not afterwards.

16 Any time during Dave Kleiman's lifetime, did he ever
17 mention anything about Bitcoin to you?

18 A. No.

19 Q. During Dave Kleiman's lifetime, did he ever tell you that
20 he mined Bitcoin?

21 A. No.

22 Q. During Dave Kleiman's lifetime, did he ever tell you that
23 he had a partnership with Dr. Craig Wright to either mine or
24 invent Bitcoin?

25 A. No.

1 Q. How would you communicate -- when you weren't with him,
2 how would you communicate with him? I mean, you had a
3 business. Did you all have -- you know, in our law firm, we
4 have an email server. Did you have something like that?

5 A. We would communicate with phone, text message, and email.

6 Q. Okay. Did you have -- did you have access to Dave's
7 emails?

8 A. No.

9 Q. Okay. Did he ever send you an email mentioning Bitcoin or
10 a text?

11 A. No.

12 Q. Or anything at all?

13 A. No.

14 Q. Okay. So I'm going to show you what I believe is already
15 admitted into evidence as -- it's D-10.

16 MR. MESTRE: All right. It is.

17 Okay. So I'm told it is, Your Honor.

18 THE COURT: Yes, it's in evidence.

19 MR. MESTRE: May I publish?

20 Okay. So let's publish this to the jury, please.

21 BY MR. MESTRE:

22 Q. Do you recognize this document?

23 A. I do.

24 MR. MESTRE: Okay. Let me actually start with the
25 second page, Mr. Reed.

1 **BY MR. MESTRE:**

2 **Q.** Okay. So this is -- this is the second page of this
3 document. Is that your handwriting where it says,
4 "Received" -- or it says, "RECD"?

5 **A.** Yes.

6 **Q.** Okay. Do you remember receiving this document?

7 **A.** I have a recollection at my office in Boynton Beach,
8 Florida, which was not the Northlake Boulevard address that's
9 on the envelope.

10 I'm not really certain as to how it got to Boynton Beach
11 with the Northlake Boulevard address on it, but I do have a
12 recollection of seeing it and opening it and then deciding to
13 memorialize that date and time by using a sharpie and writing
14 on it the date of October 10th, 2013.

15 **MR. MESTRE:** Your Honor, I'm told I made a -- I didn't
16 ask for the admission of D-56.

17 Oh, I see. I see. Apologies. Three steps behind.

18 **THE COURT:** Okay.

19 **MR. MESTRE:** So that's a mistake. I'll come back to
20 D-56.

21 **THE COURT:** All right, then.

22 **BY MR. MESTRE:**

23 **Q.** So back to -- to this exhibit -- let me take a step back.
24 Do you recognize the address where it says, "W&K Info Defense
25 Research, LLC"?

1 **A.** I do. The Northlake Boulevard address, Box 34 -- 314 was
2 an address that David Kleiman used.

3 **Q.** So that address on this document is an address that David
4 Kleiman would use?

5 **A.** Correct.

6 **Q.** Okay. Why did you think it was important to memorialize
7 it when you got it?

8 **A.** The prior page seemed to be some sort of legal --

9 **Q.** Go back to it.

10 **A.** -- notice. "Notice of Listing" is how it's labeled there,
11 and generally I look to legal documents as something that are
12 important and not to be ignored.

13 **MR. MESTRE:** Okay. I want to go back -- if I can pull
14 up -- this is not in evidence yet.

15 So if we can just show this to the witness and counsel and
16 the Court, D-56.

17 (Defendant's Exhibit D-56 marked for identification)

18 **BY MR. MESTRE:**

19 **Q.** Do you recognize this document?

20 **A.** Yes.

21 **Q.** Okay. What is this document?

22 **A.** It is Dave Kleiman letting David Kuharcik know that he
23 would be taking on the assignment as -- as our CPA.

24 **Q.** Do you recognize David Kuharcik's signature block?

25 **A.** I'm sorry. Not specifically. I mean, it looks -- it

1 looks accurate, but I couldn't --

2 **Q.** I don't mean the look of it, Mr. Conrad. I mean, do you
3 recognize the address, for instance?

4 **A.** I do not.

5 **Q.** Do you recognize his email address?

6 **A.** Yes, I do.

7 **MR. MESTRE:** Okay. Your Honor, I'd move for the
8 admission of D-56.

9 **MR. FREEDMAN:** No objection, Your Honor.

10 **THE COURT:** All right. Admitted into evidence.

11 (Defendant's Exhibit D-56 received in evidence)

12 **BY MR. MESTRE:**

13 **Q.** And just since -- since I've gone through this trouble, is
14 this -- did this email, in fact, let Mr. Kuharcik know that he
15 had been selected to be the accountant?

16 **A.** Yes.

17 **MR. MESTRE:** Okay. And if you go to the next page,
18 Mr. Reed.

19 **BY MR. MESTRE:**

20 **Q.** Is that the registration with the Florida Department of
21 State for Computer Forensics, LLC?

22 **A.** Yes.

23 **Q.** Okay. And if you keep going to the -- the next page,
24 that -- this -- can you tell me what this is?

25 **A.** It appears to be a profit-and-loss statement from

1 QuickBooks.

2 Q. Would Computer Forensics keep -- keep books?

3 Profit-and-loss?

4 A. Yes.

5 Q. Okay. And if you go to the next page, do you recognize
6 this?

7 A. It's a profit-and-loss detail page which is for Computer
8 Forensics, LLC.

9 Q. Okay. So is it -- is it fair to say that Computer
10 Forensics, LLC was very careful about the books and records it
11 kept?

12 MR. FREEDMAN: Objection, Your Honor. Leading.

13 THE COURT: Sustained.

14 BY MR. MESTRE:

15 Q. Was Computer Forensics careful about the books and records
16 it maintained?

17 A. Yes.

18 Q. Okay. So did -- did Dave Kleiman ever mention Dr. Wright
19 to you?

20 A. Yes.

21 MR. MESTRE: Oh. I think I did it again. I don't
22 think I asked for the admission of D-57. Give me one minute.

23 Let's pull up D-57 but just for the Court and counsel and
24 the witness.

25 (Defendant's Exhibit D-57 marked for identification)

1 **BY MR. MESTRE:**

2 **Q.** So, Mr. -- Mr. Conrad, the same question: Do you
3 recognize Dave Kleiman's address -- email address?

4 **A.** Yes.

5 **Q.** Do you recognize David Kuharcik's email address?

6 **A.** Yes.

7 **Q.** What does -- what is this document?

8 **A.** The -- I guess -- I'm assuming there were some attachments
9 that were part of this email chain, 1099's for work performed
10 that we had received for work done in 2012.

11 **Q.** Okay. Let's put -- I'm going to show you the attachments.

12 **MR. MESTRE:** Can you scroll?

13 **BY MR. MESTRE:**

14 **Q.** This was one of the attachments. A 1099?

15 **A.** Yes.

16 **Q.** Does this look like the attachment that the email was
17 referring to?

18 **A.** Yes, sir.

19 **MR. MESTRE:** Okay. Your Honor, I'd move for the
20 admission of D-57.

21 **MR. FREEDMAN:** Your Honor, we don't have an objection
22 per se to the document, just -- there are 1099's and tax
23 records associated with a currently operating business that's
24 not represented here.

25 So I just want to make that clear, but beyond that, I

1 don't really have an objection.

2 **MR. MESTRE:** We can -- so don't show -- Mr. Reed,
3 don't show them -- and, in fact, I'm not going to ask any
4 questions about this document.

5 So, Your Honor, we're happy to redact.

6 **THE COURT:** All right. So --

7 **MR. MESTRE:** We'll work with counsel to redact
8 whatever is appropriate.

9 **THE COURT:** All right. With the understanding that
10 the redactions will be made, Exhibit D-57 is admitted into
11 evidence.

12 (Defendant's Exhibit D-57 received in evidence)

13 **MR. MESTRE:** Thank you, Your Honor.

14 **THE WITNESS:** May I approach the Court just for one
15 second?

16 Your Honor, there was a details page from QuickBooks, a
17 profit-and-loss, that had similar information that I observed
18 in it with our client information. I would respectfully ask
19 that --

20 **MR. MESTRE:** We don't need that in evidence, Mr.
21 Conrad.

22 **THE COURT:** Yeah. Let's ensure that that information
23 is not included.

24 Is there a need to introduce all of the attachments?

25 **MR. MESTRE:** Yeah. We'll redact -- we want it -- let

1 me be clear. We -- we want the email in evidence, the
2 attachments in evidence. Whatever information is confidential,
3 we will absolutely redact.

4 **THE COURT:** But it's hard to know, based on what Mr.
5 Conrad is saying, what information he feels is privileged
6 versus what information that the attorneys feel is privileged
7 here in the courtroom.

8 So to -- to address the matter, perhaps the attorneys can
9 look at the -- at the attachments and decide that some may not
10 properly -- or should not be properly included as part of the
11 exhibit as opposed to the redaction of -- of the attachments.

12 Might -- might you do that now?

13 **THE WITNESS:** Your Honor -- Your Honor, if I may --

14 **THE COURT:** Yeah.

15 And -- and, Mr. Conrad, I certainly understand your
16 concern, and that's why I'm trying to resolve it now so that
17 you can -- you can feel comfortable knowing that your clients
18 are not going to be disclosed.

19 **THE WITNESS:** Thank you, Your Honor.

20 **MR. FREEDMAN:** Your Honor, I also just have a concern
21 that this may be in a back door to get into a privilege issue
22 we discussed with the Court earlier this -- this morning
23 about --

24 **THE COURT:** Understood.

25 And perhaps what we can do is agree to admit the first

1 page of D-57 and have the attorneys look at all of the
2 attachments and make sure that -- only the necessary ones with
3 regard to Mr. Kleiman and not including any current clients
4 with regard to any other businesses.

5 Would that be acceptable?

6 **MR. FREEDMAN:** So for us, Your Honor, yes, except, you
7 know, the members of -- Mr. Kleiman was a former member of
8 Computer Forensics. He's obviously passed on, and the two
9 members remain operating the business --

10 **THE COURT:** Right.

11 **MR. FREEDMAN:** -- and they don't have counsel.

12 **MR. MESTRE:** We're going to have a break at 3:30. We
13 can -- we're happy to work with counsel and see if we can agree
14 on the redactions -- I can't imagine we won't agree -- and with
15 Mr. Conrad, of course, to mete this concern.

16 **THE COURT:** That would be acceptable.

17 **MR. FREEDMAN:** I feel confident we can work with
18 counsel, but the issue is this is the witness's business that's
19 currently operating, and he has -- doesn't have counsel
20 present.

21 **THE COURT:** Right. So I think that's -- that's a
22 fair -- that's a fair compromise.

23 And since we are going to be taking a recess probably
24 before Mr. Conrad's testimony is concluded, then you can take
25 the time with Mr. Conrad looking at the exhibit so that he can

1 feel comfortable that that information is not disclosed. Okay?

2 **THE WITNESS:** Thank you, Your Honor.

3 **MR. MESTRE:** Thank you.

4 **THE COURT:** All right.

5 **MR. MESTRE:** And, Mr. Conrad, we will work with you.

6 So -- okay.

7 **BY MR. MESTRE:**

8 **Q.** So getting back to the question, in terms of -- I want to
9 talk to you about Dr. Wright now.

10 So did Dave Kleiman ever mention Dr. Wright to you?

11 **A.** Yes.

12 **Q.** Okay. Did he ever mention that he was working on a paper
13 with Dr. Wright?

14 **A.** He did.

15 **Q.** Okay. The paper that Dave Kleiman mentioned -- did it
16 have to do with the analysis of data from a hard drive if that
17 data had been overwritten?

18 **A.** Yes.

19 **Q.** And would it be fair to call that paper a -- a data white
20 fallacy paper?

21 **MR. FREEDMAN:** Objection, Your Honor. Leading.

22 **THE COURT:** Sustained.

23 **BY MR. MESTRE:**

24 **Q.** Have you -- have you ever heard -- did you ever hear Dave
25 Kleiman call it a data white fallacy paper?

1 **A.** We're going back many, many years. So I don't know
2 that -- that particular description, but when we would discuss
3 it, we both understood it to be the efficacy of overriding data
4 on a hard drive, how many times would be necessary in order to
5 effectively override data.

6 **Q.** And -- and did that paper have absolutely anything at all
7 to do with Bitcoin?

8 **MR. FREEDMAN:** I'm sorry. I didn't hear the question.

9 **MR. MESTRE:** I'm sorry.

10 **BY MR. MESTRE:**

11 **Q.** And that paper had absolutely nothing to do with Bitcoin?

12 **A.** No.

13 **Q.** Okay. Did he -- did Dave Kleiman ever tell you that he
14 was working on any other projects with Dr. Wright or papers?

15 **A.** I don't recall.

16 **Q.** During his lifetime, did he ever say that he had a
17 partnership to mine or invest -- invent Bitcoin with
18 Dr. Wright?

19 **A.** No.

20 **Q.** During his lifetime, did Dave Kleiman ever say that he
21 mined Bitcoin?

22 **A.** No.

23 **Q.** During his lifetime, did Dave Kleiman ever say anything
24 negative about Dr. Wright?

25 **MR. FREEDMAN:** Objection. Foundation.

THE COURT: Sustained.

BY MR. MESTRE:

Q. Did Dave Kleiman ever tell you that Dr. Wright had stolen anything from him?

A. No.

Q. I want to talk to you a moment about Dave's financial situation.

Okay. Were you aware of Dave Kleiman's financial circumstances?

A. I was.

Q. Would it be fair to call it dire?

A. Yes.

MR. FREEDMAN: Objection. Leading.

THE COURT: Overruled. I'll allow it.

BY MR. MESTRE:

Q. So he talked to you about bills and things that may have come in the mail.

Did you ever pick up his mail?

A. Multiple times.

Q. Why were you picking up his mail?

A. He was in the hospital, and mail was collecting at his -- the mailbox inside his neighborhood, and it needed to be collected.

Q. So when picking up his mail, did you ever find debt collection notices for credit cards?

A. Yes.

Q. Did you ever find -- find notices related to a foreclosure of the house?

A. Yes.

Q. Did you ever find -- strike that.

Did he ever have trouble paying his phone bill?

A. Yes.

Q. Did you ever give him money in order to pay for his phone bill?

A. I did.

Q. Did he ever say anything like, "If only I could get my 200 gazillion dollars of Bitcoin, perhaps I could have paid for this phone bill"?

MR. FREEDMAN: Objection. Leading.

THE COURT: Sustained.

Rephrase, please.

BY MR. MESTRE:

Q. If Dave Kleiman had had -- forget hundreds of millions of dollars. If he had had hundreds of thousands of dollars, would he have paid for his cell phone bill?

MR. FREEDMAN: Objection. Speculation.

THE COURT: Overruled.

THE WITNESS: Maybe you can just rephrase the question for me.

///

1 **BY MR. MESTRE:**

2 **Q.** I'll -- I'll move on.

3 Did -- did there come a time where Ira Kleiman sued you?

4 **A.** Yes.

5 **MR. FREEDMAN:** Objection. Leading.

6 **THE COURT:** I'm sorry. The basis of the objection?

7 **MR. FREEDMAN:** Leading.

8 **THE COURT:** Overruled. I'll allow it.

9 **BY MR. MESTRE:**

10 **Q.** Did he sue you personally?

11 **A.** Yes.

12 **Q.** Did he also sue Computer Forensics, LLC?

13 **A.** Yes.

14 **Q.** Did he also sue Patrick Paige?

15 **A.** Yes.

16 **Q.** Okay. Before he sued you, did you know him?

17 **MR. FREEDMAN:** Objection, Your Honor. Can -- may we
18 approach? There's a court -- I mean, there's a court order
19 that I believe is implicated by this question. I don't see the
20 relevance otherwise.

21 **THE COURT:** With regard to this witness's
22 relationship, overruled.

23 **THE WITNESS:** I'm sorry. Can you ask --

24 **BY MR. MESTRE:**

25 **Q.** Before -- before Ira Kleiman sued you, did you know him?

1 **A.** I had never met him in person. We had exchanged some
2 email.

3 **MR. MESTRE:** Okay. Can you pull up D-005? And if you
4 could go to Paragraph 35.

5 It's in evidence. You can publish this. I'm not sure
6 what you're pointing at.

7 **BY MR. MESTRE:**

8 **Q.** Okay. So the second sentence: "To the extent that
9 Computer Forensics" -- and Computer Forensics is the company
10 that you had with Dave Kleiman?

11 **A.** Correct.

12 **Q.** "To the extent that Computer Forensics, Paige, or
13 Conrad" -- is "Conrad" you?

14 **A.** Yes, sir.

15 **Q.** Okay. "To the extent that Computer Forensics, Paige, or
16 Conrad have retained any Bitcoin wallets that were the personal
17 property of Dave" -- "David Kleiman, Computer Forensics should
18 be enjoined from monetizing, transferring, or otherwise
19 converting such Bitcoin to its use or the use of its
20 principals" -- were you a principal?

21 **A.** Yes.

22 **Q.** -- "or third parties."

23 Do you see that?

24 **A.** I do.

25 **Q.** Did I read that accurately?

A. Yes, sir.

Q. Did you ever have any of Dave Kleiman's Bitcoin?

A. No.

Q. Do you have any of Dave Kleiman's Bitcoin today?

A. No.

Q. Do you know if he ever had any Bitcoin?

A. I do not.

Q. In that lawsuit, did Ira Kleiman recover any Bitcoin from you or Patrick Paige or Computer Forensics?

A. No.

MR. MESTRE: Your Honor, if I can have one moment --

THE COURT: All right.

MR. MESTRE: -- I may be finished.

I have no further questions, Your Honor.

THE COURT: All right.

MR. MESTRE: Thank you, Mr. Conrad.

THE COURT: Cross-examination?

MR. FREEDMAN: Your Honor, it's about five minutes before we normally take our break. Do you want to take the break now, or do you want me to start for five minutes?

THE COURT: It's --

MR. FREEDMAN: I'd prefer to take the break now and then come back and finish the cross.

THE COURT: All right. Let's go ahead and do that, and why don't we take the time during the break to speak with

1 Mr. Conrad.

2 All right. Ladies and gentlemen, we're on a 20-minute
3 recess.

4 **COURT SECURITY OFFICER:** All rise for the jury.

5 (Proceedings were heard out of the presence of the jury:)

6 **THE COURT:** All right. Mr. Conrad, if you can go over
7 to counsel table and speak with the attorneys so -- and we're
8 on a 20-minute recess.

9 (Recess taken at 3:20 p.m.)

10 (Proceedings resumed at 3:38 p.m.)

11 **COURT SECURITY OFFICER:** All rise.

12 **THE CLERK:** This Court's back in session.

13 **THE COURT:** All right. All right. Back on the
14 record.

15 Before we bring the jury back in, have we addressed the
16 issue with regard to the exhibit and the attachments?

17 **MS. MCGOVERN:** Yes, Your Honor. We were able to work
18 with Mr. Roche and our IT person. We've asked for Mr. Conrad
19 to -- to check the redactions that have been made, and I
20 believe it's correct to represent that Mr. Conrad reviewed them
21 and is comfortable.

22 **THE WITNESS:** Yes, ma'am.

23 **THE COURT:** All right. Wonderful.

24 And just have a seat for just a moment because I did want
25 to -- go ahead and have a seat, sir. Before we proceed with --

1 with bringing the jury out, I did want to discuss scheduling
2 only because I believe that the jury needs some direction
3 before they go home this evening.

4 So, Ms. McGovern, can you advise the Court how much more
5 time is needed on the defendant's side?

6 **MS. MCGOVERN:** Your Honor, we are moving at a steady
7 pace. We're going to be calling a witness as soon as we finish
8 with Mr. Conrad, and I believe that we are on schedule. I
9 just, again, don't know if we're going to finish all of our
10 witnesses in order for there to be closings and deliberations
11 by Tuesday of next week honestly.

12 **THE COURT:** So how much more time do you believe you
13 need for your witnesses?

14 **MS. MCGOVERN:** I believe -- one second, Your Honor.
15 Your Honor, we are not 100-percent sure that we're going
16 to be finished with our witnesses on Monday in order for
17 closings and deliberation on Tuesday. We're striving to do
18 that. I believe we can represent to the Court by the close of
19 tomorrow where we are so there is a firm understanding of what
20 we need.

21 Right now, it's just tough in light of -- I don't know if
22 we're going to finish with Mr. Kuharcik this afternoon. That
23 will, of course, affect things. We have a full day tomorrow,
24 but it's a short day, until 3:30.

25 **THE COURT:** Well, how many more witnesses does the

1 defendant have?

2 **MS. MCGOVERN:** We have -- we have four and potentially
3 five, Your Honor.

4 **THE COURT:** Do you believe that you can finish by
5 Monday afternoon?

6 **MS. MCGOVERN:** I believe that it is possible. It
7 depends upon the fifth witness, Your Honor. And, again, if we
8 could simply have 24 hours to make that final decision and let
9 the Court know by Friday, we would appreciate it.

10 **THE COURT:** All right. Well, let me state for
11 tomorrow, the jurors are available to come in at 9:30. So
12 tomorrow, we'll start at 9:30, and we'll conclude as requested
13 by -- by 3:00 p.m.

14 **MS. MCGOVERN:** Thank you, Your Honor.

15 **THE COURT:** Okay. All right. Then I'll let the
16 jurors know that we'll have a better understanding as to
17 whether we're -- we're moving into the week following
18 Thanksgiving.

19 I do want to let you know that Liz did confirm with the
20 jurors. They are not available on the 24th. Some have
21 doctor's appointments, and they would not be available --
22 available to come in that Wednesday. So if need be, we would
23 bring them back on the 29th if we needed to move into that next
24 week.

25 **MS. MCGOVERN:** Understood, Your Honor.

1 **THE COURT:** Okay. All right. All right. Let's bring
2 in the jurors.

3 **COURT SECURITY OFFICER:** All rise for the jury.
4 (Proceedings were heard in the presence of the jury:)

5 **THE COURT:** All right. Welcome back, ladies and
6 gentlemen. Please be seated, and we'll continue with the
7 testimony.

8 Mr. Freedman?

9 **MR. FREEDMAN:** Mr. Court Reporter, my name is Vel
10 Freedman for the record.

11 **CROSS-EXAMINATION**

12 **BY MR. FREEDMAN:**

13 **Q.** Good afternoon, Mr. Conrad.

14 **A.** Good afternoon, Mr. Freedman.

15 **Q.** Oh.

16 Can you hear me now?

17 **A.** Yes.

18 **Q.** Sorry.

19 Mr. Conrad, after Dave passed away, you emailed some of
20 his friends to relay the sad news; correct?

21 **A.** To inform individuals prior to some sort of public
22 notification, I felt it necessary to let associates and close
23 friends of Dave know.

24 **Q.** Courteous thing to do?

25 **A.** Yes.

1 Q. And one of those individuals that was on that email was
2 the defendant, Craig Wright?

3 A. Yes, sir.

4 Q. And do you recall whether he responded the next day to
5 your email?

6 A. So my recollection is there were multiple people who
7 responded that same day. It was a Monday morning that I sent
8 it out, and then when I got into work the following Tuesday,
9 there was a response.

10 Q. From Dr. Wright?

11 A. Yes, that's correct. I'm sorry.

12 Q. He was in Australia. So he responded at a different time
13 zone, and by the time you came into the office the next
14 morning, there was a response waiting for you in your inbox?

15 A. Yes.

16 Q. And you notified Dr. Wright and others on April 30th --
17 sorry -- rather, April 29th, and Dr. Wright responded on
18 April 30th. Do you recall that?

19 A. Yes.

20 Q. And then after those first few emails from him about
21 Dave's passing in April of 2013, you didn't hear from him again
22 for a while; right?

23 A. I've never spoken to Craig Wright. I've never emailed
24 directly with him.

25 Q. But there eventually came a time when he emailed you -- so

1 let me back up for a second.

2 You emailed Dr. Wright on -- in April 2013. He responds,
3 "Dave passed away." He acknowledges that Dave passed away.
4 That's April 30th. There's a gap in time, and then eventually
5 he emails you and Patrick Paige again; right?

6 **A.** I don't have clear recollection of that. I'm sure in the
7 emails that were produced during discovery, there would be --
8 that would be memorialized. I -- I just simply don't know the
9 dates, and with the gap in time --

10 **Q.** That's fair. It's been a long time. This isn't a test.

11 **MR. FREEDMAN:** Let's -- D-0- -- D-042, please,
12 Ms. Vela, which is in evidence, if we can publish that to the
13 jury.

14 **BY MR. FREEDMAN:**

15 **Q.** Mr. Conrad, do you recognize this as your email announcing
16 that Dave Kleiman had passed away?

17 **A.** I do.

18 **Q.** And one of the recipients is Dr. Wright. He's the last --
19 he's the last two words on the first line, Craig S. Wright.

20 Do you see that?

21 **A.** I do, yes.

22 **MR. FREEDMAN:** And then can you -- Ms. Vela, can you
23 scroll down to Dr. Wright's -- or scroll up to Dr. Wright's
24 response? I guess it's up.

25 ///

1 **BY MR. FREEDMAN:**

2 **Q.** And that's Dr. Wright's response. It says it's actually
3 the day before, but that's the time -- that's the time
4 difference; right?

5 **A.** Yes, sir.

6 **Q.** And that's April of 2013; correct?

7 **A.** That's correct.

8 **MR. FREEDMAN:** And then, Ms. Vela, can you put P-122
9 on the screen for Mr. Carter -- Mr. Conrad, which is also in
10 evidence, if we can publish to the jury.

11 And can we go to Page 1, please. Sorry, the last page.

12 **BY MR. FREEDMAN:**

13 **Q.** Can you see that, Mr. Conrad? Is that up in front of you?

14 **A.** It is, yes.

15 **Q.** Okay. Is this the next time you heard from Craig Wright
16 after the initial condolences emails?

17 **A.** Again, as I testified previously, I don't have clear
18 recollection. We produced correspondence. We produced email
19 as part of the discovery in this matter. If this is the next
20 in that chain, then I would say yes, but I don't know it
21 clearly.

22 **Q.** That's fair.

23 Well, I'll represent to you as an Officer of the Court
24 this is the next in your email -- email production. Okay?

25 **A.** Yes, sir.

1 Q. So this is February 2014. That's nine and a half months
2 after the condolences email in April; right?

3 A. Yes, sir.

4 Q. So in this email, Dr. Wright says to you, "Dave and I had
5 a project in the U.S. He ran it there. We kept what we did a
6 secret."

7 Do you see that?

8 A. I do.

9 MR. MESTRE: Your Honor, objection. This is outside
10 the scope of direct.

11 THE COURT: Overruled.

12 BY MR. FREEDMAN:

13 Q. And he then says to you that the company that he ran there
14 mined Bitcoin; right?

15 A. Yes, sir.

16 Q. And, in fact, Mr. Conrad, Dave did keep this a secret
17 because he never said anything to you about it; right?

18 MR. MESTRE: Objection. Argumentative. Speculative.

19 THE COURT: Sustained on the second ground.

20 Rephrase.

21 BY MR. FREEDMAN:

22 Q. Did Dave ever tell anything to you -- strike that.

23 Did Dave ever tell you anything about this business with
24 Craig Wright to mine Bitcoin in the United States?

25 A. No, sir.

1 Q. Now, I believe in the email, he says, "It's an amount too
2 large to email."

3 Do you see that?

4 A. That's correct.

5 Q. David didn't tell you about that, either?

6 A. No.

7 Q. So Dave kept it a secret; right?

8 A. He never told me about it.

9 Q. Okay. Did you -- were you aware -- were you aware, Mr.
10 Conrad, that within day -- days before this email was sent,
11 Dr. Wright had received inquiries from the Australian Taxation
12 Office about W&K?

13 MR. MESTRE: Objection. Foundation. Outside the
14 scope.

15 THE COURT: Overruled.

16 THE WITNESS: I knew nothing about the ATO until
17 subsequent to -- or this proceeding -- as part of this
18 proceeding and part of the discovery.

19 BY MR. FREEDMAN:

20 Q. So at the time you received this email from Dr. Wright,
21 you were not aware that he had just received inquiries from the
22 Australian Tax Office about W&K Info Defense Research; right?

23 MR. MESTRE: Objection. Asked and answered.

24 THE COURT: Sustained.

25 ///

BY MR. FREEDMAN:

Q. So this email is dated February 12th, 20 -- 2014.

Do you see that?

A. Yes, sir.

Q. And then do you recall whether or not Dr. Wright eventually provided some information to you on where you might be able to find Dave's assets?

MR. MESTRE: Objection. Foundation.

THE COURT: Overruled.

THE WITNESS: I would say I know there was some correspondence or perhaps conversation with Patrick regarding keywords, if we had any storage of any ESI to look through. There were various keywords that were part of that request.

BY MR. FREEDMAN:

Q. So can you bring us to Page 1 of this email chain?

Do you see Dr. Wright's response to Patrick Paige on February 16th, 2014?

A. I do.

Q. Is this the names -- keywords that you were referring to that he gave to Patrick Paige?

A. So I do recognize "W&K." I recognize "the GICSR trust." The other number and the alphanumeric characters, I don't recall. I do remember "Belize" being part of that request or, you know, keyword search.

Q. And at the time that you received -- Mr. Paige received

1 this email from Dr. Wright, were you aware of the organization
2 called GICSR?

3 **MR. MESTRE:** Objection. Speculative.

4 **THE COURT:** If the witness is aware. Overruled.

5 **THE WITNESS:** There was a conference call that Dave
6 and I were on. I don't remember the woman's name, Deb
7 something.

8 **BY MR. FREEDMAN:**

9 **Q.** Kobza?

10 **A.** I don't recall her last name, but -- but I believe it was
11 in reference to GICSR.

12 **Q.** And had you ever heard of a GICSR trust?

13 **A.** I had not.

14 **Q.** Are you aware this Ms. Kobza has testified in this
15 proceeding that there was no such thing? Ms. Debra Kobza?

16 **MR. MESTRE:** Objection. Argumentative.

17 **THE COURT:** Sustained.

18 **BY MR. FREEDMAN:**

19 **Q.** Are you aware of whether or not Ms. Kobza has testified in
20 this litigation?

21 **A.** No.

22 **Q.** You tried to find some of these assets; right?

23 **A.** I don't recall exactly. I would submit to you that, in
24 all likelihood, a search of email or any sort of case files
25 that we had were likely searched. I don't recall when that was

1 or to what extent, if -- it -- I do not believe, if it was
2 done, that any results came out of it.

3 **Q.** You were not able to find anything; right?

4 **A.** There was nothing -- if the keyword searches were done on
5 what was available to us, there was -- there was no responsive
6 items.

7 **Q.** So this information never assisted you in finding any
8 assets that belonged to David Kleiman; right?

9 **A.** That's correct.

10 **Q.** Mr. Conrad, when Dr. Wright's attorneys were up here, they
11 showed you a document from the Australian court system. Do you
12 recall that?

13 **A.** I do, yes.

14 **Q.** Ms. -- Dr. Wright didn't send that envelope, did he?

15 **MR. MESTRE:** Objection. Foundation.

16 **THE COURT:** Overruled. If the witness knows.

17 **THE WITNESS:** The return address, I believe, was the
18 court system, not Dr. Wright.

19 **BY MR. FREEDMAN:**

20 **Q.** It was sent from the Australian court system; right?

21 **A.** That's my recollection.

22 **MR. FREEDMAN:** Ms. Vela, can you put D-010 in -- on
23 the screen for us? No, D-010. Thank you.

24 And can you go first to the -- to the second page, which
25 is the envelope?

1 And can we publish this to the jury? This is in evidence.

2 **THE COURT:** Yes. It's in evidence.

3 **MR. FREEDMAN:** Thank you, Your Honor.

4 **BY MR. FREEDMAN:**

5 **Q.** Top left corner, Mr. Conrad. It's the return address of
6 the Supreme Court of New South Wales, Australia, right, just
7 like you said?

8 **A.** That's correct.

9 **MR. FREEDMAN:** And, Ms. Vela, can you bring us to
10 the -- the first page of the document?

11 **BY MR. FREEDMAN:**

12 **Q.** It's written on the letterhead of the Supreme Court of New
13 South Wales?

14 **A.** That's correct.

15 **Q.** It has the Court's address on it?

16 **A.** Yes, sir.

17 **Q.** The Court's email address on it?

18 **A.** That's correct.

19 **Q.** The Court's phone number on it?

20 **A.** Yes.

21 **Q.** You don't even know if Dr. Wright was even aware that the
22 Court had sent this to you; isn't that true?

23 **A.** It was all news. It was all brand-new. Again, I felt it
24 was important enough to memorialize it and retain a copy of it.

25 **Q.** But you don't know whether or not Dr. Wright was aware the

1 courts had emailed -- I'm sorry -- had mailed out this letter;
2 correct?

3 **MR. MESTRE:** Objection. Speculative.

4 **THE COURT:** If the witness knows. Overruled.

5 **THE WITNESS:** I do not know.

6 **BY MR. FREEDMAN:**

7 **Q.** Do you see the case number? Right underneath the case
8 number, it says, "Case Titled Craig Steven Wright versus W&K
9 Info Defense"?

10 **A.** I do.

11 **Q.** And this Notice of Listing is dated September of 2013.
12 Do you see that?

13 **A.** Yes.

14 **Q.** And the lawsuit that was filed was in July and August of
15 2013. Are you aware of that?

16 **A.** I am not.

17 **Q.** You didn't receive any notification from Dr. Wright that
18 he had filed a lawsuit against W&K in July of 2013, did you?

19 **A.** I don't recall receiving any notification.

20 **Q.** You didn't receive any; correct?

21 **A.** I don't -- no.

22 **Q.** And you didn't receive anything letting you know that he
23 filed a lawsuit in August of 2013, either; right?

24 **A.** No.

25 **Q.** And you didn't receive a notification from him in

1 September of 2019, when this document is dated; right?

2 A. No, sir.

3 Q. But he had your email address?

4 A. Yes, sir.

5 Q. He had it for a long time already; correct?

6 A. That's correct.

7 Q. And he knew you and Dave were close friends and that you
8 trusted Dave; right? "Dave trusted you" I believe were his
9 words?

10 A. That's what he stated in the email, yes.

11 Q. Were you aware that -- were you aware that by the time he
12 emailed you in February of 2014, he had already secured a
13 consent judgment from the Australian courts taking W&K's
14 intellectual property?

15 A. No, sir, I was not aware.

16 Q. But he told you to look for W&K to find assets; right?

17 A. That's correct.

18 Q. He didn't mention --

19 A. Or it was Patrick, but --

20 Q. Pat -- I think you were on the email, too, though; right?

21 Oh, no, no. You're right. You're right. It was Patrick.
22 It was Patrick, but Patrick talked to you about it?

23 A. He communicated it to me, yes.

24 Q. When he told you to look at W&K to find assets, he didn't
25 tell you he had stripped all the assets out, did he?

A. No, sir.

Q. Prior to receiving this notice, you had never heard of W&K; correct?

A. That's correct.

Q. And when you received this notice, you had no idea what it was, just that it was important? It looked important?

A. It certainly looked important. Again, as I've already said, legal document -- I don't -- I try not to ignore those. There are repercussions for doing that.

Q. And it -- the notice didn't say anything about Dave Kleiman on it; right?

A. It -- it had -- no, there was nothing directly saying Dave Kleiman, but the address, the Northlake Boulevard address, was one that Dave used. I recognized that.

Q. And when you received it, you didn't know that this W&K issue had anything at all to do with Dave Kleiman; correct?

A. I knew nothing about it at all.

Q. And for that reason, you didn't tell his brother or the personal representative of the estate because you didn't know what it related to; right?

A. I don't recall when it was communicated to the plaintiff in this matter. I do not have any recollection.

Q. Certainly not when you received it because at that point, you didn't even know who it related to; correct?

A. Yes, sir.

1 Q. It wasn't until sometime later that eventually Dr. Wright
2 told you that W&K was related to Dave, and eventually you told
3 Ira Kleiman -- or Patrick Paige, who told Ira Kleiman about
4 this; right?

5 A. That's correct. All those communications were not with --
6 any communications with Dr. Wright were not with me excepting
7 the emails that you showed previously, that we looked at
8 previously. There was a point in time when all of those
9 communications were directly with Patrick.

10 Q. And does it -- does it help refresh your recollection if I
11 suggest to you that it was 2016 when you finally -- not you but
12 Patrick finally conveyed this information about the listing to
13 Ira Kleiman?

14 A. I wish I had clear recollection. I'm sorry, Mr. Freedman.

15 Q. No. That's fair. It's been a long time.

16 Certainly, that could -- that's -- that's possible; right?

17 A. Yeah, it's possible, sir.

18 Q. So I think the record is clear on this, but I just want to
19 make sure. You have zero recollection about talking to Ira
20 about this listing at any time; right?

21 A. I don't recall any conversation.

22 Q. Ever mentioning to him, ever writing to him, ever
23 communicating to him --

24 MR. MESTRE: Objection. Asked and answered.

25 THE COURT: Sustained.

1 **MR. FREEDMAN:** Thank you, Ms. Vela. You can take that
2 down.

3 Can you put D-005 on the screen? And let's go to the last
4 page of that PDF. That's in evidence. Can we zoom on the
5 signatures, please, just the signatures. No, no, no. Yeah.
6 Thank you.

7 Could we put that off on the left-hand side of the screen
8 for a moment?

9 **BY MR. FREEDMAN:**

10 **Q.** And before we do anything else, Mr. Conrad, do you
11 recognize Dave Kleiman's signature on this document?

12 **A.** I do.

13 **Q.** It says, "Dave Kleiman's Digital Signature"; right?

14 **A.** Yes.

15 **Q.** And he would regularly use a cryptographic signature like
16 this to digitally sign documents; right?

17 **A.** Yes.

18 **Q.** And it had that Adobe marking and all the information next
19 to his signature; right?

20 **A.** Correct.

21 **Q.** And the Adobe watermark on it also; right?

22 **A.** The watermark meaning --

23 **Q.** Well, it's hard to see on this document actually, but --
24 never mind. Strike that. Forget I asked that.

25 **MR. FREEDMAN:** Ms. Vela, can you -- can you bring up

on the right-hand side P-710? Let's go to Page 13.

BY MR. FREEDMAN:

Q. This is a contract at issue in this case, Mr. Conrad, that purports to be between Dave Kleiman, Craig Wright, and W&K.

MR. FREEDMAN: Ms. Vela, can you bring us to Page 21?

MR. MESTRE: Objection, Your Honor. Beyond the scope.

THE COURT: Overruled. I'll allow it.

BY MR. FREEDMAN:

Q. Do you see the words "Dave Kleiman" on the right-hand side in computer font?

A. I do.

Q. That's not a cryptographic signature; right?

A. No, sir.

Q. You've never seen Dave Kleiman sign like that, have you?

A. I haven't. I'm more familiar with either a hand signature or the one that's being presented on the screen.

Q. And that is not his hand signature; correct?

A. It's -- I'm not -- it's not familiar to me at all.

MR. FREEDMAN: Thank you, Ms. Vela. You can take those down, please.

BY MR. FREEDMAN:

Q. Mr. Conrad, I'd like to talk to you a little bit about Dave.

Dave was a brilliant guy; right?

A. He was very intelligent, yes.

1 Q. He was extremely talented in cryptography; right?

2 A. He had a great interest and aptitude in cryptography.

3 Q. And he was very talented in data security; right?

4 A. Yes.

5 Q. And he was very talented in networking; right? Computer
6 networking?

7 A. Yes.

8 Q. In fact, he was internationally known for his computer
9 forensic skills; right?

10 A. He had a reputation and exceedingly positive reputation
11 internationally, yes.

12 Q. So I'd like to pivot for a moment and talk to you for a
13 moment about Dave's work.

14 You knew him for a long time; right?

15 A. Yes, sir.

16 Q. You worked with him for a long time; right?

17 A. Unfortunately not as long as I would have liked, but
18 officially we worked together about a year.

19 Q. You were close friends?

20 A. We were good friends, yes.

21 Q. He was one of your best friends?

22 A. Dave made everybody feel like you were his best friend,
23 but we were very close.

24 Q. There came a time when Dave was admitted to the hospital;
25 right?

1 **A.** Yes.

2 **Q.** And -- but even when he was in the hospital, you continued
3 to have daily conversations with him; right?

4 **A.** I did. There was a period of time when he was in Palm
5 Beach VA Hospital, and he was segregated in an infectious
6 disease section. So it was difficult to see him personally. I
7 did visit him there, but even still, it -- it was a challenge
8 even to talk on the phone at that point.

9 **Q.** But you emailed with him?

10 **A.** I did, yes.

11 **Q.** You texted with him?

12 **A.** I did.

13 **Q.** And how long was that period he was in the --

14 **A.** I don't have clear recollection, but the Palm Beach VA did
15 not have a spinal cord injury. And when he was originally
16 injured back in the 90's, he had rehabbed at the facility --
17 the VA facility here in Miami. And so then he was transferred
18 from Palm Beach to -- to the Miami facility.

19 **Q.** And these daily discussions that you had with him -- they
20 were about work; right? Not just work, but they included work;
21 right?

22 **A.** Yes, sir.

23 **Q.** And they included research into Computer Forensics'
24 issues; right?

25 **A.** That's correct.

1 Q. And they also included personal and just -- niceties and
2 things friends talk about; right?

3 A. That's correct.

4 Q. And he worked when he was in the hospital; right?

5 A. He did.

6 Q. He even gave webinars from his hospital room, didn't he?

7 A. I do recall at least one webinar, one training that he did
8 from the Miami VA Hospital.

9 Q. And isn't it true that his laptop was always --
10 essentially always near him in the hospital?

11 A. Yes, that's correct.

12 Q. Dave wasn't unproductive in the hospital, was he?

13 A. He had times when he was recovering from surgeries, and
14 certainly there was downtime then. But once he had moved on
15 from that, he was -- he was unhappy when he wasn't working. So
16 he had a strong desire to continue to work and be productive.

17 Q. Are you aware that he turned down medical services so that
18 he could continue working -- medical treatments so he could
19 continue working?

20 A. So I don't have distinct recollection of that, but I know
21 he had cases that he was working in that time when he was in
22 the hospital.

23 Q. He wasn't a lazy person?

24 A. Dave was certainly not a lazy person.

25 Q. He worked hard?

1 **A.** Dave was a very hard worker, yes.

2 **Q.** And he did contribute to projects and work while he was in
3 the hospital; right?

4 **A.** That's correct.

5 **Q.** And he was -- I think you said he was really talented with
6 computer networks; right?

7 **A.** Yes.

8 **Q.** And isn't it true that he remotely controlled computers
9 and computer-related devices from wherever he was through
10 networks?

11 **A.** I know for a certainty he would be in his bedroom or in
12 his bed and there were computers in another part of the house,
13 another bedroom that was an office, and he could remote into
14 those devices, you know, from his bed. I know that for sure.

15 **Q.** All right. Are you familiar with scripting?

16 **A.** Yes.

17 **Q.** It's a form of programming? Coding?

18 **A.** Yes.

19 **Q.** And you never talked with Dave about his coding ability;
20 right?

21 **MR. MESTRE:** Objection. Beyond the scope.

22 **THE COURT:** Sustained.

23 **BY MR. FREEDMAN:**

24 **Q.** Was Dave able to write computer scripts?

25 **MR. MESTRE:** Objection. Beyond the scope.

1 **THE COURT:** Overruled. I'll allow that.

2 **THE WITNESS:** Part of Dave's -- excuse me. His
3 presentations, particularly for event log extraction, timeline
4 information -- much like the one I described earlier on in my
5 testimony, in 2009 at the CEIC conference in Orlando, he would
6 use scripts in order to facilitate the extraction of
7 information from those event logs that -- the Windows computer
8 event logs to reconstruct timelines.

9 So I know he used scripts. Whether -- I don't know that I
10 recall seeing him construct them, but he got them from
11 somewhere. So it's -- there's a great likelihood that he
12 built -- he built them, but I don't know that for a fact.

13 **BY MR. FREEDMAN:**

14 **Q.** Were you aware that he's the technical editor of a book on
15 Perl scripting?

16 **A.** I know he contributed to several publications. As an
17 Officer of the Court, if you stipulate that that's the case,
18 I -- it wouldn't be out of -- out of the scope of my
19 understanding of what he did.

20 **Q.** And eventually, Mr. Conrad, you entered into a formal
21 partnership with Dave Kleiman in Computer Forensics, LLC;
22 right?

23 **A.** That's correct. Yes, sir.

24 **Q.** Your business with Dave wasn't a secret; correct?

25 **A.** It was not a secret.

1 Q. You never asked Dave to keep your business with him a
2 secret; right?

3 A. I did not ask him to keep it a secret.

4 Q. You never asked Dave to delete all the records of your
5 partnership; correct?

6 A. No.

7 Q. You never told anyone that your partnership with Dave was
8 a secret; right?

9 A. I never told anyone my partnership with Dave was a secret,
10 no.

11 Q. And your partnership with Dave Kleiman did not result in
12 the creation of a digital currency as a market capital of over
13 a trillion dollars; right?

14 A. No, sir.

15 MR. MESTRE: Objection. Argumentative.

16 THE COURT: Sustained.

17 BY MR. FREEDMAN:

18 Q. You had a formal operating agreement as part of Computer
19 Forensics, LLC. We saw that; right?

20 A. That's correct.

21 Q. Isn't it true that Dave Kleiman was a "My word is my bond"
22 type of guy?

23 A. Dave valued personal relationships and -- and
24 interpersonal agreements. If he committed to do something, he
25 was the type of person that would -- that would perform a task

1 just based on his word or agreement to do it.

2 **Q.** He had no problem signing the formal agreement you
3 presented him with; right?

4 **A.** No, there was no -- no problem with that.

5 **Q.** He also wouldn't have had a problem doing it on a
6 handshake; right?

7 **MR. MESTRE:** I'm sorry. I didn't hear that question.

8 **BY MR. FREEDMAN:**

9 **Q.** He also would not have had a problem doing it on a
10 handshake; right?

11 **MR. MESTRE:** Objection. Speculative.

12 **THE COURT:** Overruled.

13 **THE WITNESS:** There was some insistence -- not --
14 "insistence" is the wrong word. I wanted -- I wanted the
15 agreement -- the corporate papers to be without any question
16 and particularly regarding who owned what and what percentage.
17 So Dave was amenable to signing that agreement that laid that
18 out very clearly.

19 **BY MR. FREEDMAN:**

20 **Q.** And as a lawyer, I'm proud of you, but I want to focus on
21 Dave.

22 He had no problem signing that agreement, but you were the
23 driving force behind documenting Computer Forensics for the
24 good of the corporate order; right?

25 **MR. MESTRE:** Objection. Asked and answered.

Speculative and misleading.

THE COURT: Overruled.

THE WITNESS: I would submit to you I brought it to bear. I -- I brought the subject up, and Dave was amenable to -- to form the LLC in that fashion much like I was amenable to selecting the CPA that he used. We were, you know --

BY MR. FREEDMAN:

Q. Partners?

A. We were working together in -- you know, for the good of the -- of the LLC.

Q. So you were in a partnership with Dave; right?

A. Yes.

Q. You were his good friend?

A. Yes.

Q. You knew him well?

A. Yes.

Q. Dave was a proud man?

A. He was very proud.

Q. He didn't want to ask for help?

A. He found it difficult to ask for help.

Q. At the end of his life, he needed financial help?

A. That's correct.

Q. And it's true that it's never made sense to you why, if Dave personally owned millions of dollars in Bitcoin, he wouldn't have sold some to get out of debt; right?

1 **A.** I struggle -- I struggle with that. He was in a very bad
2 financial situation. His health was not good. I didn't think
3 it was as bad as it was ultimately, but I've struggled with the
4 idea if he had access to -- to any sort of assets -- that he
5 wouldn't use them, but -- but he didn't.

6 **Q.** Isn't it true, Mr. Conrad, that Dave was an honorable
7 person?

8 **A.** Highly. Highly honorable.

9 **Q.** His word was meaningful to him?

10 **A.** It was meaningful.

11 **Q.** His word was his honor?

12 **A.** Correct.

13 **Q.** And if the Bitcoin belonged to a partnership but not Dave
14 personally, then Dave would never put his hand in the cookie
15 jar without his partner's permission; right?

16 **MR. MESTRE:** Objection. Speculative. Argumentative.

17 **THE COURT:** Sustained.

18 **BY MR. FREEDMAN:**

19 **Q.** Isn't it true, Mr. Conrad, that if the Bitcoin belonged to
20 a partnership and not Dave personally, then it would make sense
21 to you why Dave never sold Bitcoin?

22 **MR. MESTRE:** Objection. Speculative. Argumentative.

23 **THE COURT:** Sustained.

24 **MR. FREEDMAN:** Your Honor, can we -- may we approach?

25 **THE COURT:** The objection's sustained. You may

1 continue, sir.

2 **BY MR. FREEDMAN:**

3 **Q.** All right. You said it wouldn't have made sense to you if
4 it belonged to him personally; right?

5 **MR. MESTRE:** I'm sorry. I don't understand the --

6 **THE COURT:** I'm sorry.

7 **BY MR. FREEDMAN:**

8 **Q.** You said -- you said that Dave not selling Bitcoin to get
9 out of debt never made sense to you if he personally owned
10 Bitcoin; correct? That was your testimony today?

11 **A.** Yes. I believe my testimony was I've struggled with that
12 concept with someone being in such dire financial
13 circumstances, if there were assets available to alleviate
14 that, that, you know -- so those -- those are ifs, but if
15 something existed -- I knew the financial situation.

16 He -- he didn't want help from outside. He would rather
17 have had it from himself, you know? So yes, I've struggled
18 over the years understanding if there was funds, why wouldn't
19 they have been used.

20 **Q.** Now, I want to focus on that, not what Dave would have
21 done. I want to focus on your struggle to understand that.
22 Okay?

23 **A.** Yes.

24 **Q.** Would you struggle to understand it if Bitcoin belonged to
25 a partnership and not Dave Kleiman?

MR. MESTRE: Objection. Relevance.

THE COURT: Sustained.

BY MR. FREEDMAN:

Q. You knew Dave Kleiman well?

A. Yes.

Q. Did he ever steal from the assets of your partnership with him?

A. Never.

Q. Would he have ever stolen from the assets of any partnership?

A. I -- I don't think Dave was a thief. He was an honorable person. That was my testimony.

Q. Did he ever take from the assets of your partnership without your permission?

A. Never.

Q. Would he have ever taken from the assets of your partnership without permission?

MR. MESTRE: Objection. Asked and answered. Relevance.

THE COURT: Sustained.

BY MR. FREEDMAN:

Q. Even though he was in dire straits?

MR. MESTRE: Same objection.

THE COURT: Sustained.

MR. FREEDMAN: Your Honor, if I can have a moment to

1 consult.

2 **THE COURT:** Certainly.

3 **MR. FREEDMAN:** Your Honor, we have no further
4 questions.

5 **THE COURT:** All right. Any redirect?

6 **MR. MESTRE:** No redirect, Your Honor.

7 **THE COURT:** All right. Ladies and gentlemen, you have
8 the right to ask Mr. Conrad some questions. Is there anyone
9 that has a question for Mr. Conrad? If you'd just raise your
10 hand just so I can give you the opportunity to write down your
11 question, are there any questions for Mr. Conrad?

12 I'm seeing no hands raised.

13 All right. Is Mr. Conrad excused on behalf of the
14 defendant?

15 **MR. MESTRE:** Yes, Your Honor.

16 **THE COURT:** On behalf of the plaintiffs?

17 **MR. FREEDMAN:** Yes, Your Honor.

18 **THE COURT:** Thank you, sir. You are excused.

19 **THE WITNESS:** Thank you.

20 **THE COURT:** And the defendant's next witness?

21 **MS. MCGOVERN:** Your Honor, Dr. Wright calls David
22 Kuharcik via video.

23 **THE COURT:** All right.

24 **MR. ROCHE:** Your Honor, do you anticipate us both --
25 both sides logging into the Zoom?

1 **THE COURT:** I'm sorry?

2 **MR. ROCHE:** Should both sides log into the Zoom?

3 **THE COURT:** Yes.

4 **MR. ROCHE:** Okay.

5 **THE COURT:** And I am as well.

6 **MR. ROCHE:** Okay.

7 **THE COURT:** So just give us a moment.

8 **MR. RIVERO:** Your Honor, I'm sorry. Just to

9 understand, if I wanted to observe, I would have to log in as

10 well? Is that how it works?

11 **THE COURT:** Yes. You should have each brought your

12 laptops.

13 **MR. RIVERO:** I do. I have it.

14 **THE COURT:** All right. So everybody has the meeting

15 ID and the passcode?

16 **MS. MCGOVERN:** I pressed the wrong button. I

17 apologize.

18 Logging in now, Your Honor.

19 **THE COURT:** I am as well.

20 **MS. MCGOVERN:** Your Honor, just so I understand, will

21 the video deposition be played on the screens in front of the

22 jury?

23 **THE CLERK:** Yes.

24 **MS. MCGOVERN:** Okay.

25 **THE CLERK:** Now --

1 **MS. MCGOVERN:** I just didn't know if there was a --

2 **THE CLERK:** I need everybody's computer that's --

3 that's logging on from here to be on mute.

4 **COMPUTER:** Recording in progress.

5 **MS. MCGOVERN:** I just wonder whether I also need to
6 be --

7 **THE CLERK:** Everybody's computer needs to be on mute.
8 If not, we're going to get this feedback.

9 **MS. MCGOVERN:** I don't know if Mr. Kuharcik has logged
10 in. I don't -- I don't see that Mr. Kuharcik has logged in
11 yet.

12 **MR. RIVERO:** Your Honor, it is not relevant --

13 **MS. MCGOVERN:** It says it's waiting for the host to
14 let him in.

15 **THE CLERK:** I know.

16 **MS. MCGOVERN:** Oh. Is that you? Okay.

17 **THE CLERK:** I'm trying to get this done first.

18 **THE COURT:** Yeah. Liz will let him in. Just let us
19 set up.

20 **MR. RIVERO:** Your Honor, there's some feedback, but
21 this screen has stopped working. I will watch it on my laptop.
22 For the next witness, it's not working.

23 **THE COURT:** Right, but the screen -- actually, Mr.
24 Rivero doesn't need his screen, but I need an attorney on the
25 defendant's -- Ms. McGovern's here. So we're -- we're good on

1 this end. I can -- I can mute for now, and I can unmute if
2 there's an objection.

3 **THE CLERK:** Okay.

4 **THE COURT:** Yeah, because I think we're going to get
5 some feedback.

6 **THE CLERK:** Yeah. Okay.

7 **THE COURT:** All right. I'm just going to ask the
8 attorneys, because we want to make sure there isn't any -- any
9 feedback with the microphone, that if there is an objection,
10 just allow me to unmute so I can rule on the objection once
11 it's made. And if we can advise the witness as well once he
12 comes in.

13 **MS. MCGOVERN:** Would you like me to proceed,
14 Your Honor?

15 **THE COURT:** All right. Mr. Kuharcik, I'm going to
16 need you to unmute.

17 We're going to have to -- members of the jury, are you
18 able to see the individuals on the screen?

19 All right. Mr. Kuharcik, before you proceed with your
20 testimony, let me ask that you stand to raise your right hand
21 to be placed under oath, sir.

22 **THE WITNESS:** Okay.

23 DAVID KUHARCIK,
24 called as a witness for the Defendant, having been duly sworn,
25 testified as follows:

THE WITNESS: I do.

THE CLERK: Thank you.

Could you please state your name and also spell it for the record.

THE WITNESS: Yes.

My name is David Kuharcik. That's K-u-h-a-r-c-i-k.

THE CLERK: Thank you.

DIRECT EXAMINATION

BY MS. MCGOVERN:

Q. Good afternoon, Mr. Kuharcik.

A. Good afternoon.

Q. Mr. Kuharcik, do you know Dave -- did you know David Kleiman?

A. Yes, I did.

Q. How did you know David Kleiman? How did you know David Kleiman? How did you know David Kleiman?

A. David was a friend of mine.

THE CLERK: Okay. So here's the thing. Without yours being on, he's not going to be able to hear you.

THE WITNESS: And also -- once I became a CPA, I also helped him in his income tax matters.

BY MS. MCGOVERN:

Q. Okay. What is your profession?

A. I'm a certified public accountant.

THE CLERK: Hold on. Hold on. I'm sorry. We need to

1 stop. Hold on. We need to have the judge's mike on and yours
2 off because we're going to keep getting this feedback,
3 Ms. McGovern.

4 **MS. MCGOVERN:** I just muted -- muted my computer.

5 **THE CLERK:** Right, but then he's not going to be
6 able -- he's not going to be able to hear without the judge's
7 computer on. So let's try it that way --

8 **MS. MCGOVERN:** Okay.

9 **THE CLERK:** -- and see if he can hear, like, that.

10 **BY MS. MCGOVERN:**

11 **Q.** Mr. Kuharcik, can you hear me?

12 **A.** Yes, I can.

13 **Q.** Perfect. Let me start again.

14 How did you know David Kleiman?

15 **A.** I knew him from when we were younger in the late 1980's.
16 We were friends, and, you know, I had a social -- social
17 friendship. And then I became his accountant, you know, later
18 on as he was in business for himself and, of course, as I was
19 certified.

20 **Q.** Okay. So you say that you met him in the 80's. Do you
21 recall generally in the 80's when that would have been? Would
22 it be the late 1980's when you first met David Kleiman?

23 **A.** Yeah, probably mid to late 1980's.

24 **Q.** All right. So you were in your 20's -- or David Kleiman
25 was approximately how old when you first met him?

1 A. We were in our 20's.

2 Q. Okay. And did you meet him -- how did you meet David
3 Kleiman?

4 A. I guess through my, at that point, in-laws. They were
5 friends with him, and then we subsequently became friendly.

6 Q. Okay. And when you say that you became friendly, what
7 type of a friendship did you have with David Kleiman after you
8 met him through your in-laws?

9 A. Well, we might get together, him and his wife and me and
10 my wife, and we might watch a ball game, have dinner, you know,
11 socialize, see a movie.

12 Q. Okay. Would you go out and have a beer?

13 A. No, not at that time.

14 Q. Okay. Did your relationship develop over time? Did it
15 become -- did it develop into something beyond just a
16 friendship when -- after you first met him in the late 1980's?

17 A. No. We were pretty much friends, and -- yes.

18 Q. So you met David Kleiman in the 19- -- a long time ago,
19 late 1980's. And you socialized, David Kleiman and his wife,
20 you and your wife. Did there come a point in time when your
21 friendship turned into something professional? Did you at some
22 point provide professional services in some capacity for David
23 Kleiman?

24 A. Yes, I did.

25 Q. Okay. What -- what were those professional services that

1 you provided?

2 A. I prepared his income tax returns.

3 Q. What is your profession, Mr. Kuharcik?

4 A. I'm a certified public accountant.

5 Q. Okay. When did you become -- how long have you been --
6 are you a certified public accountant now?

7 A. Yes, I am.

8 Q. Okay. And when did you first become a certified public
9 accountant? How long have you been engaged in that profession?

10 A. Since 1983.

11 Q. Okay. When you first -- when you first met David Kleiman,
12 you were already a CPA; is that right?

13 A. Yes, I was.

14 Q. Okay. And what does your -- what does it mean to be a
15 certified public accountant? What exactly does a CPA do?

16 A. Well, there's a number of things that they could do. They
17 could provide audits for financial statements, business
18 consultation, financial planning, income tax preparation and
19 planning. They could engage in private industry as financial
20 controllers and such.

21 Q. Does it include tax planning?

22 A. Tax planning? Yes, it does.

23 Q. What does it take to become a certified public accountant?
24 What type of education do you have to have in order to be a
25 CPA?

1 **A.** I'm not sure of the current requirements for becoming a
2 CPA.

3 **Q.** What did you have to obtain in order to become a CPA?

4 **A.** I had to have a Bachelor's degree in Accounting and a
5 year's experience with a public accounting firm.

6 **Q.** Where did you -- could you briefly describe your
7 educational background, please.

8 **A.** Yeah. I attended Florida Atlantic University, received my
9 degree, and that was it.

10 **Q.** And did you receive a degree in Accounting from Florida
11 Atlantic?

12 **A.** Yes. Yes, I did.

13 **Q.** How long does it take to get a degree in Accounting from
14 Florida Atlantic? Is that a four-year program?

15 **A.** It was a four-year program --

16 **Q.** Did --

17 **A.** -- two-year program, I think, at that point because you
18 had the Palm Beach Junior College at that time. I think it's
19 Palm Beach Community or Palm Beach State College now. So it
20 used to be a two-year and then a two-year, so four years all
21 together.

22 **Q.** Four years all together.

23 And after that, I think you said you worked in some
24 capacity in that field; is that -- is that right?

25 **A.** Yes, I did.

1 Q. What did you do?

2 A. Well, I was a staff accountant at a public accounting
3 firm.

4 Q. Which one?

5 A. Frank Berman CPA, PA.

6 Q. And what sort of things did you do in the capacity -- or
7 in that capacity? What sort of things did you do in -- for
8 that company as an -- as an accountant?

9 A. Mainly income tax preparation, possibly some financial
10 statement preparation, maybe some tax planning, basically it.

11 Q. And did you have to take an exam of some type in order to
12 practice as a CPA?

13 A. Yes, I did.

14 Q. And what exam is that? What exam did you take in order to
15 become a certified public accountant?

16 A. The CPA exam.

17 Q. And when you took the CPA exam, was that taken in one fell
18 swoop, or did you have to take it on multiple days? How --
19 sort of what is involved with the CPA? I've heard -- I've
20 heard it's quite an extensive exam; is that right?

21 A. Yeah. Well, back at that point, it was a four-part exam,
22 and I don't remember if it was given over more than one day. I
23 think it was just one day, but I could be mistaken.

24 Q. Did you pass it the first time?

25 A. No. I think I passed it the second time.

1 Q. Okay. And after you -- how long did that -- what was the
2 next position that you took after passing the CPA, after you
3 obtained your license for CPA? What was the first position
4 that you held?

5 A. Well, that was with -- staff accountant at Frank Berman,
6 CPA, PA.

7 Q. And I think you said you were there for two years; is that
8 right?

9 A. I was there for a couple of years.

10 Q. Okay. And what did you do after that?

11 A. Then I started my own firm.

12 Q. Okay. And during this period of time, you -- you were
13 friends with Dave Kleiman; is that right?

14 A. Later in this period of time.

15 Q. You became friends with Dave Kleiman.

16 And have you been a CPA continuously, Mr. Kuharcik, since
17 then?

18 A. Yes, I have.

19 Q. Okay. And, sir, could you describe briefly the
20 responsibilities that you have as an accountant?

21 A. Well, I have to be independent and objective with respect
22 to my clients. I have certain confidential communications with
23 clients. And, you know, I owe the clients due care and, you
24 know, professional, you know, competence in those engagements
25 that I take on.

1 **Q.** Is there a general sort of know-your-customer duty as an
2 accountant of a client, that you need to know sort of the --
3 you need to know your customer in order to be able to properly
4 fulfill your duties as that client's accountant?

5 **MR. ROCHE:** Objection. Leading.

6 **THE COURT:** I'm sorry. The objection is?

7 **MR. ROCHE:** Leading.

8 **THE COURT:** I'll allow it. Overruled.

9 **THE WITNESS:** Well, yeah. You -- you would have to
10 have some familiarity in any -- any specifics pertaining to the
11 client, their industry or business that they might be in.

12 **BY MS. MCGOVERN:**

13 **Q.** Well, let me just step back for a second in terms of this
14 sort of know-your-customer overall responsibility.

15 Are there departments that -- that regulate the business
16 and professional responsibility of an accountant in the State
17 of Florida as an accountant?

18 **A.** Oh, yes.

19 **Q.** Could you tell us what they are, please.

20 **A.** Well, yeah. The Department of Business and Professional
21 Regulation.

22 **Q.** What is that?

23 **A.** That's a Florida regulatory body that regulates the -- I
24 guess a variety of different professions and activities,
25 including public accountancy.

1 Q. Any other regulatory agency that oversees your work,
2 Mr. Kuharcik?

3 A. No.

4 Q. Okay. When you prepare a tax return for a client, what
5 sort of things do you need to have in order to prepare a
6 complete and accurate return?

7 A. Well, you would like to -- need to have -- of course, you
8 would have to have their income tax documentation or records
9 that accurately reflect their income and expenses or
10 deductions.

11 It might be helpful to have some prior year of returns for
12 comparison's sake or to, you know, review their -- their
13 historical data, you know, basically, of course, interviewing
14 the client for any specifics, things like that.

15 Q. Okay. And all of this is necessary in order to ensure a
16 complete and accurate return. Is that fair?

17 A. Yes.

18 Q. And preparing a complete and accurate return -- why is
19 that important, Mr. Kuharcik? In preparing a tax return for a
20 client, why is it important to prepare a complete and accurate
21 one?

22 MR. ROCHE: Objection. Relevance.

23 MS. MCGOVERN: Your Honor, this goes directly to the
24 issues in the case.

25 THE COURT: All right. Perhaps we can get there. The

objection is overruled at this point.

THE WITNESS: Okay. Could you repeat the question, please.

BY MS. MCGOVERN:

Q. Yeah.

Why is it important, Mr. Kuharcik, to prepare a complete and accurate return for a client?

A. Well, because you're filing your tax return with the federal government, and so you want to ensure that, you know, what you're filing is complete and accurate so that you comply with the federal income tax codes and you don't violate the law.

Q. It's the law, isn't it?

MR. ROCHE: Objection. Relevance.

THE WITNESS: It is.

THE COURT: Sustained.

BY MS. MCGOVERN:

Q. Let me ask you a little bit about Dave Kleiman and your preparation of his complete and accurate returns, Mr. Kuharcik.

When did you first, if you recall, engage or accept an engagement to prepare a complete and accurate return for Mr. Kleiman? Do you recall the year, Mr. Kuharcik?

A. No, I don't.

Q. Would it refresh your recollection if you began doing that in the 1990's?

MR. ROCHE: Objection. Leading.

MS. MCGOVERN: I'm refreshing the recollection.

THE COURT: Overruled.

THE WITNESS: Okay. Yeah, it was probably sometime in the 1990's.

BY MS. MCGOVERN:

Q. Okay. And were you his -- were you Dave Kleiman's accountant from that period through his death in 2013, Mr. Kuharcik?

A. Yes, I was.

Q. And did you prepare his complete and accurate federal tax returns consistently for each of those years, Mr. Kuharcik?

A. Yes.

Q. Was there an exception for the last year that he -- 2012, Mr. Kuharcik?

MR. ROCHE: Objection.

BY MS. MCGOVERN:

Q. Do you recall?

MS. MCGOVERN: I'm simply trying to -- let me rephrase that.

THE COURT: Well, what's -- what's the basis of the objection?

MR. ROCHE: We're getting close to the line of the accountant privilege that we discussed earlier, Your Honor, and -- the general questioning is fine, but once we get into

1 the -- the particular nature of the conversations, I think
2 we're stepping beyond the privilege line.

3 **MS. MCGOVERN:** I think --

4 **THE COURT:** Ms. -- Ms. McGovern?

5 **MS. MCGOVERN:** Yes. Hi.

6 I just simply wanted to make sure that the years were
7 accurately reflected. I can rephrase.

8 **THE COURT:** All right. But let's make sure that
9 Mr. Kuharcik understands the parameters with regard to the
10 testimony.

11 **BY MS. MCGOVERN:**

12 **Q.** Mr. Kuharcik, just to be clear, I don't want you to give
13 me any information regarding any tax advice you provide -- you
14 provided to David Kleiman during the years that you were his
15 accountant and prepared his federal tax returns, just to be
16 clear.

17 So please don't sort of blurt anything out that might be
18 tax advice because I'm not soliciting that, and that would --
19 and I do not want to invade that privilege.

20 **A.** Okay.

21 **Q.** So let me be clear. Just so the record is clear, you
22 began working with Mr. Kleiman in the 1990's, preparing his
23 federal tax returns every single year until he died. Was there
24 a year in which his federal tax return was not prepared by you,
25 Mr. Kuharcik, if you recall?

1 **A.** Oh. In that timeframe up until when he died, the 2012
2 return was not prepared.

3 **Q.** So other than the 2012 year, every other tax return, is it
4 fair to say, you prepared?

5 **A.** To the best of my knowledge, yes.

6 **Q.** Okay. I want to ask you a little bit about the
7 information that Mr. Kleiman would give you in connection with
8 your preparation of his federal tax return so that it could be
9 complete and accurate.

10 What did Mr. Kleiman provide to you, without detailing the
11 underlying information in terms of numbers or anything else,
12 but generally categories? Do you recall what sort of
13 information he would provide to you in order for you to prepare
14 that return?

15 **MR. ROCHE:** Objection. Privileged.

16 **MS. MCGOVERN:** Your Honor, I'm not asking for anything
17 specific, but I think --

18 **THE COURT:** All right. Let me just make sure that
19 it's very clear to -- to the parties and also to Mr. Kuharcik
20 that the accountant/client privilege applies in this case.

21 And that is, sir, you are prohibited from disclosing a
22 communication between you and your client. Those
23 communications are confidential, and they are not to be
24 disclosed.

25 So to the extent that the testimony seeks to disclose

1 communications between you and Mr. Kleiman, then the Court will
2 sustain any objection and will -- will not allow its
3 introduction. All right, sir?

4 **THE WITNESS:** Yes, Your Honor.

5 **BY MS. MCGOVERN:**

6 **Q.** So if I may ask, Mr. Kuharcik, what sort of information
7 did you require -- did you request from Mr. Kleiman in order to
8 prepare his annual federal tax return?

9 **MR. ROCHE:** Objection. Privilege. This goes to the
10 substance of the confidential communications which were --

11 **THE COURT:** To the extent that it's not a
12 communication and it refers to particular information, then the
13 objection is overruled.

14 **THE WITNESS:** Okay. So 1099 forms, any information
15 returns he might receive from third parties, perhaps schedules
16 or other underlying data, maybe banking records, things along
17 those lines.

18 **BY MS. MCGOVERN:**

19 **Q.** Did Mr. Kleiman work with you in connection with your
20 preparation and completion of the federal tax return each year,
21 Mr. Kuharcik?

22 In other words, to be specific, without giving the details
23 of what you discussed, did Mr. Kleiman engage in the process of
24 exchanging information with you so that you could prepare a
25 complete and accurate return on his behalf?

1 **MR. ROCHE:** Objection. Asked and answered.

2 Your Honor, if we might have a sidebar to discuss --

3 **MS. MCGOVERN:** It's a completely different question.

4 **THE COURT:** I don't believe that there's a sidebar
5 that's necessary. The Court is listening carefully, and as I
6 advised Mr. Kuharcik, the contents of any communication between
7 Mr. Kuharcik and -- and Mr. Kleiman are not to be disclosed.
8 So to that extent, the objection is overruled.

9 The question calls for a yes-or-no response. Did you
10 understand the question, sir?

11 **THE WITNESS:** Please repeat the question.

12 **BY MS. MCGOVERN:**

13 **Q.** My question, Mr. Kuharcik, was whether or not Mr. Kleiman
14 worked with you -- engaged in the process of exchanging
15 information in order to allow -- permit you to prepare his
16 complete and accurate return each year?

17 **A.** Yes.

18 **MS. MCGOVERN:** Okay. If you could please show
19 Defendant's -- before -- before we do so, 362, which I believe
20 is admitted into evidence unless I'm mistaken.

21 **THE COURT:** Exhibit 362 is in evidence.

22 **MS. MCGOVERN:** If you could please show 362, and I'm
23 not sure if Mr. Kuharcik is going to be able to see this.

24 **THE CLERK:** If you want him to see it, it has to be
25 shown as a shared screen.

MS. GONZALEZ: Perfect. It worked.

THE CLERK: Okay.

MS. MCGOVERN: Thank you.

BY MS. MCGOVERN:

Q. Mr. Kuharcik, this document has already been admitted into this litigation -- into this lawsuit. It is before the jury right now, and I'm just telling you this because you're doing this by Zoom and I want to make sure you understand what's going on.

So we -- this is an email from Dave Kleiman to a number of people, including, if you see in the "To" line -- and I'll be asking about -- you about this a little bit later -- Craig Wright. If you could highlight that name for me, please, I'm going to be asking you about that name later, Mr. Kuharcik.

But for now, this is an email dated October 13th, 2008, two weeks before Halloween, from David Kleiman and others. And it says, "Importance: High."

And Mr. Kleiman states, "All, I apologize for not" -- "for being a holdup on my portion of this. No excuse. However, I forgot my accountant filed an extension for me on taxes this year, and October 15th" -- I can't see the rest of that because of things there.

But it states, "October 15th is the cutoff. I have been working on that nonstop until the wee hours of the morning for the past few days and just finishing up."

1 Do you see that, Mr. Kuharcik?

2 **A.** Yes, I do.

3 **Q.** Were you Mr. Kleiman's accountant in October 2008?

4 **A.** Yes.

5 **Q.** So this is consistent, isn't it, with Mr. Kleiman working
6 with you and getting you all the information you needed to
7 prepare a complete and accurate return on his behalf, isn't it?

8 **MR. ROCHE:** Objection to the -- she's asking whether
9 or not this email is consistent with the communications they
10 had.

11 **THE COURT:** Sustained.

12 **MS. MCGOVERN:** No. Let me rephrase, Your Honor, if I
13 might.

14 **BY MS. MCGOVERN:**

15 **Q.** I'm not asking, Mr. Kuharcik, about your communications
16 with Mr. Kleiman -- ever am I asking that. I'm simply asking:
17 What you stated is that Mr. Kleiman worked with you in
18 connection with preparing the tax return, whether his statement
19 that in October of 2008 he's working nonstop -- whether that is
20 consistent with the manner in which you engaged in preparing
21 the tax return. That's all I'm asking.

22 **MR. ROCHE:** Your Honor, that's the -- same objection.
23 To the extent how they worked, Mr. Kuharcik and Mr. Kleiman
24 together, that goes to the communication.

25 **THE COURT:** The question calls for a yes-or-no

1 response without disclosing the content of any communication.

2 You may respond, Mr. Kuharcik.

3 **THE WITNESS:** Okay. Repeat the question, please.

4 **BY MS. MCGOVERN:**

5 **Q.** Is it consistent, Mr. Kuharcik, with the manner in which
6 Mr. Kleiman engaged in the preparation with you of his annual
7 return?

8 **A.** I guess I don't quite understand. It seems in the -- this
9 correspondence, he's telling people that he's working to obtain
10 information for his taxes. So --

11 **Q.** My question simply was whether or not that was consistent,
12 but that's okay, Mr. Kuharcik. I'll move on.

13 With respect to the tax year 2008, you stated, I believe,
14 that you were Mr. -- Mr. Kleiman's accountant during that time.
15 Mr. Kleiman, did Mr. Kuharcik -- for the tax year ending 2008,
16 did you --

17 **A.** Yes.

18 **Q.** -- ever -- did you ever speak with Mr. Kleiman about a
19 legal partnership that he had with Dr. Craig Wright?

20 **MR. ROCHE:** Objection. Privileged.

21 **THE COURT:** Sustained.

22 **BY MS. MCGOVERN:**

23 **Q.** Were you aware in the preparation of the tax return for
24 the period ending October -- December 31st, 2008, whether
25 Mr. Kleiman had a legal partnership with Dr. Craig Wright?

MR. ROCHE: Objection. Privileged.

THE COURT: Sustained.

MS. MCGOVERN: Your Honor, I know there's only about five more minutes, but I have two questions, and then we can --

THE COURT: All right. Why don't we finish with this witness. We spent a good amount of time getting him here.

MS. MCGOVERN: Mr. -- well, Mr. -- we're not finished with this witness right now, but I'd like --

THE COURT: Right, but why don't we finish with Mr. Kuharcik today.

MS. MCGOVERN: Judge, we're not going to be able to finish with him today.

THE COURT: I'd like to try. We've taken a lot of effort with this Zoom hearing.

MS. MCGOVERN: Okay. Well --

THE COURT: All right. So let's continue.

BY MS. MCGOVERN:

Q. Mr. -- I'd like to show -- if you can look, please, at Defendant's 18, Mr. Kuharcik, I believe it was provided to you earlier.

MS. MCGOVERN: If you could pull that up, please.

BY MS. MCGOVERN:

Q. Mr. Kuharcik --

A. Yes, ma'am.

Q. -- did you -- do you -- do you recognize -- this document

1 has been admitted into evidence. So I'll ask you directly: Do
2 you recognize this tax return -- U.S. tax return for 2010?

3 **A.** Yes, I do.

4 **Q.** And did you prepare this tax return for Mr. Kleiman for
5 2010?

6 **A.** Yes, I did.

7 **Q.** And could you please tell us on this tax return whether
8 the business income for the tax year -- for the tax return for
9 2010 is reflected on this document.

10 **A.** Yes, it is.

11 **Q.** And could you please tell us what that business income is.

12 **A.** The gross income or net income?

13 **Q.** The gross income, please.

14 **A.** The gross income was \$39,848.

15 **Q.** And the net income?

16 **A.** It was \$14,102.

17 **Q.** And if you could scroll through this document for me,
18 please. And as you see it, Mr. Kuharcik, if you could tell me
19 whether anything in this tax return for 2010 reflects a legal
20 partnership regarding Bitcoin.

21 **MR. ROCHE:** Objection. Privilege. The document
22 speaks for itself.

23 **THE COURT:** The document is in evidence. Is there a
24 reason for Mr. Kuharcik to comb through the document? Is there
25 a part within the -- the exhibit that you want to point him to?

1 **MS. MCGOVERN:** I'm simply asking whether anything in
2 this document reflects anything related to Bitcoin for this --
3 for 2010, Your Honor. That's all I'm asking.

4 **THE COURT:** Well, that's not -- that wasn't the
5 question, but if you want to ask the question -- but perhaps we
6 could, since it's on the screen, just refer Mr. Kuharcik to the
7 particular page or perhaps ask him a more narrow question so
8 that we can -- we can --

9 **MS. MCGOVERN:** Okay.

10 **THE COURT:** -- get to the next document.

11 **MS. MCGOVERN:** Your Honor, if we can go to the first
12 page, please, the first page of the -- of the document, please.

13 **BY MS. MCGOVERN:**

14 **Q.** Let me -- let me ask it this way, Mr. Kuharcik. Your
15 reference to the gross and the net income for 2010 -- is there
16 anything in this tax return for either of those figures that
17 reflects either profits or losses or expenses, business
18 expenses, in connection with a legal partnership regarding
19 Bitcoin -- relating to Bitcoin?

20 **MR. ROCHE:** Objection. The document speaks for itself
21 and privilege.

22 **THE COURT:** The objection's sustained.

23 **MS. MCGOVERN:** I'm going to ask the same question,
24 Your Honor, with D-19.

25 If you could please pull it up.

1 I'd ask to be allowed to state my -- my questions for the
2 record, Your Honor, with respect to Mr. Kleiman's accountant.

3 **THE COURT:** Could we focus on the particular portion
4 that you want the witness to look to?

5 **MS. MCGOVERN:** Your Honor, the -- the tax return --

6 **THE COURT:** No. I understand the tax return, but
7 there are many pages. There are 13 pages here. So it would be
8 helpful for the witness if we could point to the particular
9 page.

10 **MS. MCGOVERN:** Yeah. With respect to the first page,
11 Your Honor -- I think we have to go back to D-18.

12 With respect to the first page, Your Honor, I simply asked
13 whether in the 14,102 figure, for the net income for the
14 year -- for the 2010 year -- whether or not that figure
15 reflects any profits or -- or business expenses related to a
16 partnership involving Bitcoin.

17 That was my question, Your Honor. That's a very specific
18 number that I'm asking for on the very first page of the
19 document. That was my question.

20 **MR. ROCHE:** And, again, Your Honor, this -- the
21 document speaks for itself. And to the extent we're going
22 outside the number, that gets into privilege -- of the
23 accountant privilege.

24 **MS. MCGOVERN:** Your Honor, Mr. --

25 **THE COURT:** To the extent, Mr. Kuharcik, that the

1 document itself reflects the businesses, if there are certain
2 schedules that you can point the -- the jury to and to -- to
3 Ms. McGovern and Mr. Roche and the Court, then that may be
4 helpful, sir.

5 But to the extent that the question calls for
6 communication between you and Mr. Kleiman, the Court will not
7 permit it.

8 **THE WITNESS:** So communication as to where the numbers
9 might be derived from would be --

10 **THE COURT:** Are there attachments or schedules that
11 you can assist with in answering Ms. McGovern's question?

12 **THE WITNESS:** Well, all of his business activity is
13 reflected on the Schedule C, which I think is the third page of
14 the exhibit.

15 **MS. MCGOVERN:** It is.

16 If you can please bring it to the Schedule C.

17 And I can direct, Your Honor -- I can direct my question
18 to Schedule C.

19 **BY MS. MCGOVERN:**

20 **Q.** The profit or loss from business in Schedule C,
21 Mr. Kuharcik -- is there anything in this schedule that
22 reflects either profit or business expenses related to a
23 partnership involving Bitcoin?

24 **MR. ROCHE:** Object -- again, objection. The document
25 speaks to itself, and to the extent --

THE COURT: The objection's sustained.

BY MS. MCGOVERN:

Q. Mr. -- Mr. Kuharcik, does -- does -- in connection with the preparation of -- of this tax return, the 2010 tax return, did you receive a ledger of any kind regarding the partnership that is reflected in Schedule C from Mr. Kleiman? In order to prepare Schedule C, did you receive a general ledger or any other information that would reflect the numbers that are -- that are contained in Schedule C?

A. I don't recall specifically what documentation I received for this return.

Q. Do you -- do you recall, Mr. -- Mr. Kuharcik, if at any period of time from the -- in connection with your providing accounting services to David Kleiman -- whether you ever became aware of any profits or any business expenses related to a legal partnership involving Bitcoin with Mr. Kleiman?

MR. ROCHE: Objection. Privileged.

THE COURT: Sustained.

MS. MCGOVERN: One second, Your Honor, please.

BY MS. MCGOVERN:

Q. Mr. Kuharcik, if I can please bring your attention to Line 13 on Schedule C, and it --

A. Yes.

Q. -- it refers to depreciation in Section 179, "Expense Deduction."

1 Do you see that?

2 **A.** Yes, I do.

3 **Q.** Is there anything in that -- in that section of Schedule C
4 on this publically filed federal tax return which reflects
5 expenses related to the purchase of computer servers?

6 **MR. ROCHE:** Objection. The document speaks for itself
7 and privilege. Your Honor, this whole line of questioning is
8 going to try to expand the scope of what the document states.
9 I think it's inappropriate.

10 **THE COURT:** The objection is sustained.

11 **MS. MCGOVERN:** Your Honor, if we could speak with you
12 for a moment about --

13 **THE COURT:** All right. Come on -- come on forward
14 because -- let's -- let's address this.

15 (The following proceedings were heard at the sidebar:)

16 **THE COURT:** All right.

17 **MS. MCGOVERN:** I didn't bring my mask.

18 **THE COURT:** That's all right. I think everyone else
19 has their mask on.

20 **MS. MCGOVERN:** Your Honor, this case is about whether
21 David Kleiman had a legal partnership with Dr. Wright.

22 **THE COURT:** I know what the case is about.

23 **MS. MCGOVERN:** I understand, but if I can just make my
24 statement here, we are not asking for privileged information
25 with him. He's prepared a tax return, and there's information

1 on that tax return that either supports and makes more probable
2 or not a material fact that's in this case.

3 The objection on privilege is being used overbroadly. The
4 accountant/client privilege is not supposed to be used
5 prophylactically. It's not the attorney-client privilege.
6 Case law is clear on that, Your Honor.

7 And it seems that what we should be able to ask
8 Mr. Kuharcik in order to be able to get the facts in front of
9 the jury --

10 **THE COURT:** Uh-huh.

11 **MS. MCGOVERN:** -- with respect to whether, in fact,
12 Mr. Kleiman took the actions consistent with the partnership --

13 **MR. ROCHE:** Your Honor --

14 **MS. MCGOVERN:** -- without invading the privilege.

15 **THE COURT:** Response?

16 **MR. ROCHE:** Your Honor, I brought up some case law,
17 but it looks like you already have it there in front of you.

18 **THE COURT:** I have it.

19 **MR. ROCHE:** Okay.

20 **THE COURT:** So is there a response?

21 **MR. ROCHE:** The response is I think the case law in
22 front of you says even if the evidence is needed for the case,
23 the privilege -- attorney/client -- or the accountant/client
24 privilege protects that information. You can't go beyond the
25 four walls of what's on the returns. You can't go into

1 communications.

2 I don't think you can go into the nature of the documents
3 that are exchanged because if I say -- if I say, "Well, did he
4 provide you anything related to Bitcoin," well, that goes to --
5 that goes to what he did and didn't provide. And so I do think
6 the nature of what is provided to -- by Mr. Kleiman to
7 Mr. Kuharcik during the context of the accountant
8 relationship -- that is all privileged.

9 They want them to -- if they want Mr. Kuharcik to read
10 certain lines and ask if -- I think that's -- under the law,
11 that's the scope of what's permissible.

12 **THE COURT:** Ms. McGovern, what you're specifically
13 asking with regard to that figure, the 10,000-some-odd dollars,
14 is you're asking whether that amount contains certain monies or
15 certain assets related to a partnership. That is directly tied
16 to a communication between Mr. Klein -- Mr. Kleiman and
17 Mr. Kuharcik. We had a discussion before lunch with regard to
18 the accountant/client privilege.

19 This Court is sitting in diversity, and because this Court
20 is sitting in diversity, Florida law applies, and the privilege
21 applies. And specifically, let me state with regard to the
22 cases, Florida's accountant/client privilege is set forth in
23 90.5055.

24 It's clear to the Court from the cases that I've read,
25 specifically a case from April of 2021 here in the Southern

1 District, that the privilege applies to any communication
2 between the accountant and the client -- in this case
3 specifically, Ira Kleiman as the personal representative of the
4 deceased client -- is able to raise the privilege as a result.
5 There are no exceptions that would apply.

6 And the communication between an accountant and the
7 accountant's client is confidential, and that's where I think
8 there's a problem here. If there are attachments and schedules
9 that you want to refer to -- but to ask him specifically with
10 regard to a figure and what information is contained within
11 that lump figure goes right to the heart of communications
12 between the accountant and the client, and I can't permit it.

13 **MS. MCGOVERN:** Your Honor, I understand what you're
14 saying. I'm not actually pushing back even on that. I'm
15 simply saying that the -- the sword and the shield they're
16 applying here -- we're not -- we're simply asking whether
17 Mr. Kuharcik was ever -- ever -- ever preparing the tax return
18 with information relating to Bitcoin. That -- we're not asking
19 what David Kleiman told him, what Dave --

20 **THE COURT:** But that's -- the only way he would know
21 is if he was given communications through Mr. Kleiman. I've
22 given you full range to ask about documents that may be
23 attached as part of the exhibit, but -- but any other
24 communication, I can't permit it.

25 Let me say specifically with regard to the case law, it's

1 the Eleventh Circuit of *Mesa v. Clarendon National Insurance*
2 *Company*, 799 F.3d, 1353, and the recent case of *List Industries*
3 *v. Wells Fargo*, and that is in 2021 Westlaw 319661. There
4 is -- there is no basis to carve out an exception in this case,
5 and the questions that you are asking go to the heart of those
6 communications.

7 So I -- the objection is sustained. So what other
8 guidance do you need from the Court?

9 **MS. MCGOVERN:** I think the only thing that I would
10 say, Your Honor, is we have -- we have a short line of
11 questioning with respect to the work that was performed, not
12 specifically with respect to Computer Forensics but simply the
13 difference and the manner in which he prepared a return for
14 Computer Forensics and the manner in which -- that's all we're
15 going to ask.

16 But I have to say one thing about the -- about the
17 information that is not being permitted here with respect to
18 the Bitcoin. To the extent that there were communications that
19 they were having -- because they were also friends -- outside
20 of the accountant/client privilege, we have the right to ask
21 Mr. Kuharcik whether Dave Kleiman ever, in his capacity as a
22 friend -- because they were also friends -- ever raised Bitcoin
23 to him.

24 And I don't --

25 **THE COURT:** I -- response?

SIDE BAR

1 **MR. ROCHE:** Your Honor, anything related under
2 attorney/client -- accountant/client privilege under Florida
3 law is broad. If it contains anything that is said in the
4 context of communications concerning the tax return, to the
5 extent they're trying to get around it by applying some
6 friendship, I think that's inappropriate.

7 So, look, Your Honor, I think this whole line of
8 questioning is broad, and I want to address -- hold on one
9 second. There was one thing that was brought up in
10 relationship to Computer Forensics. I can't assert the
11 privilege on behalf of Computer Forensics, but I do think
12 there's a problem.

13 I just had Mr. Conrad up here, who was a representative of
14 Computer Forensics. To the extent they're going to get into
15 Computer Forensics, questions about their --

16 **MS. MCGOVERN:** That's not what we're trying to do.

17 **MR. ROCHE:** I think the documents they admitted --

18 **THE COURT:** All right. At this point, let's -- let's
19 just get through this witness.

20 Yes.

21 **MS. MCGOVERN:** One point.

22 Mr. Kuharcik was deposed. Mr. Brenner never said, "As
23 long as you're asking for tax information, you can inquire
24 about this area."

25 And the prelude to every question was "We're not asking

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SIDEBAR

1 for tax advice. We simply want to know whether or not, in
2 fact, you ever became aware at any point of time over those 20
3 years that Dave Kleiman had a legal partnership with Craig
4 Wright." That's all we asked.

5 **THE COURT:** But the awareness is based on
6 communications by the client.

7 **MS. MCGOVERN:** The objection wasn't made in the
8 deposition.

9 **THE COURT:** But it's been raised now.

10 **MS. MCGOVERN:** I understand.

11 **THE COURT:** I have a responsibility to rule correctly.
12 I don't want to try this case again.

13 **MS. MCGOVERN:** I understand. I understand.

14 **MR. RIVERO:** The Court has ruled -- I'm sorry. I know
15 the Court has ruled -- has ruled many times in this proceeding
16 about waiver -- the failure to assert -- they represented W&K.
17 Michelle has made an appearance. The failure to object at
18 deposition constitutes a waiver that is an exception to
19 privilege.

20 And, Judge --

21 **THE COURT:** Well, you can provide some case law, but
22 it's been asserted here before the Court.

23 **MR. ROCHE:** It isn't asserted in a deposition.

24 **THE COURT:** I don't know about a particular
25 circumstance where you ask a question in a deposition and all

3.15 EBAR

MR. RIVERO: Judge, if I can say for the record it is

MR. ROCHE: Your Honor, that --

MR. RIVERO: That constitutes a waiver, and the waiver

THE COURT: Okay. I don't have the benefit of

MR. ROCHE: Right.

THE COURT: -- address that at this point.

Let me state that I'm a little concerned because it's now

So can we get -- how much more time do you have?

MR. RIVERO: Your Honor, I'm going to discuss this

THE COURT: All right.

MR. RIVERO: -- if we can establish that, in fact,

~~SIDE BAR~~

1 there was a waiver.

2 So with all due respect, Your Honor, I understand the
3 Court wanted to stop ten minutes ago, but, you know, we don't
4 agree. We asked these questions at deposition. They did not
5 assert these -- these objections. Those are waived, and I have
6 a responsibility to try to --

7 **THE COURT:** All right. Then --

8 **MR. ROCHE:** Your Honor --

9 **THE COURT:** Then let's do this right. File
10 Mr. Kuharcik's deposition with the Court. Provide the case law
11 to the Court this evening. I will see the parties here at
12 9:15, and give the Court the case law for the Court to consider
13 that the -- the privilege has been waived. All right?

14 **MS. MCGOVERN:** Thank you, Your Honor.

15 And should we --

16 **THE COURT:** All right.

17 (Proceedings were heard in the presence of the jury:)

18 **THE COURT:** All right. Where is Mr. Kuharcik?

19 **THE CLERK:** I brought him back into the room. I had
20 taken him out. So he --

21 **THE COURT:** With the same invitation.

22 All right. Mr. Kuharcik?

23 I'm not certain where the gentleman went.

24 **THE WITNESS:** Yes.

25 **THE COURT:** Maybe we can get the document off the

1 screen, and he may appear.

2 All right. Mr. Kuharcik, we will see you tomorrow morning
3 at 9:30, sir, for the continuation of your testimony. All
4 right, sir?

5 **THE WITNESS:** Very good.

6 Thank you, Your Honor.

7 **THE COURT:** All right. Just use the same invitation
8 that was used today, sir.

9 **THE WITNESS:** I will do so.

10 **THE COURT:** All right, sir.

11 **THE CLERK:** Thank you very much.

12 **THE WITNESS:** Thank you.

13 **THE COURT:** All right. Ladies and gentlemen, as you
14 can see -- and I apologize -- it is well past 5:00 o'clock. I
15 understand that Liz spoke with you about coming in a little bit
16 early since we are going to be ending early at 3:00 o'clock.
17 So I'll see you bright and early at 9:30, if you'll be in the
18 jury room ready to come into the courtroom.

19 I know that several of you have asked about the schedule.
20 I do want to advise you that Liz did let me know that we would
21 not be in session -- to the extent that we are not able to
22 finish on Tuesday, we'll have a better indication tomorrow, but
23 we will not be in session on Wednesday. I know that several of
24 you had some conflicts with Wednesday. So we will not be in
25 session that day.

1 In terms of the following week, which would start on
2 November 29th, I will be in a better position after I speak
3 with the attorneys tomorrow to give you some guidance.

4 Okay. All right. Please remember as you leave you are
5 not to do any independent research. You're not to speak with
6 anyone or permit anyone to speak with you. Everything learned
7 about the case is learned in the courtroom.

8 Have a pleasant evening. I'll see you tomorrow morning at
9 9:30.

10 **COURT SECURITY OFFICER:** All rise for the jury.

11 (Proceedings were heard out of the presence of the jury:)

12 **THE COURT:** All right. Go ahead and have a seat.

13 All right. Then as I stated, if you will provide that to
14 the Court tonight -- have you previously filed Mr. Kuharcik's
15 deposition?

16 **MR. ROCHE:** Your Honor, I don't know if Mr. Kuharcik's
17 deposition has been previously filed, but I do think we might
18 be able to short-circuit this.

19 On November 9th, 2019 -- I've got the letter in front of
20 me, and we're working on showing it to the jury [sic] now. But
21 Andrew -- my counsel -- co-counsel Andrew Brenner sent a letter
22 to Mr. Kuharcik advising him of the privilege and in context of
23 the deposition that was set to take place in this case, and it
24 was cc'ed to both my firm and Rivero Mestre.

25 And it reads -- is it on the screen yet? Oh, great --

1 "Dear Mr. Kuharcik, please be advised this firm represents Ira
2 Kleiman, as personal representative of David Kleiman. We
3 understand that you provided accounting services to David
4 Kleiman."

5 "We have been advised that the law firm Rivero Mestre, the
6 attorneys representing defendant Craig Wright, intend to serve
7 you with a subpoena for testimony and documents. I am
8 enclosing a copy of the same for your review."

9 "Please take notice that on behalf of the Estate of David
10 Kleiman is hereby invoking all accountant/client privileges
11 pursuant to, but not limited to, the privilege set forth in
12 Florida Statute 90.5055."

13 So, Your Honor -- I mean, I can read the rest of the
14 letter. I'll bring up the parts of the deposition where we did
15 object on the ground of privilege, but the idea that there was
16 a waiver here is borderline frivolous.

17 **MR. RIVERO:** Your Honor, Mr. Brenner -- I want to be
18 very clear. Mr. Brenner was present at the deposition. I'm
19 looking at the testimony. This is -- Your Honor, it is past
20 the Court's time to hear this, but there is a specific question
21 about whether Bitcoin was discussed between David Kleiman and
22 Mr. Kuharcik which was not objected to. I'm looking at it in
23 the transcript.

24 Therefore, Judge, it is not frivolous. I don't care what
25 they said beforehand. They sat in deposition, they heard the

1 question, and there is no objection. So --

2 **MR. ROCHE:** Your Honor -- Your Honor, that's -- I'm
3 reading the client's 27 -- Page 27:

4 "Mr. Brenner: Just -- we're going to take this slowly.
5 There could be certain communications you had with Dave that
6 will be privileged, that will assert the privilege. I won't
7 know that by how he's asking. The general thing -- we're going
8 to invoke privilege or at least decide whether to --
9 conversations regarding confidential accounting-type
10 information. So social conversations -- all that is fine."

11 I can go on, but, Your Honor, this is --

12 **MR. RIVERO:** Your --

13 **MR. ROCHE:** I think this is, respectfully, not an
14 appropriate use of -- of our time.

15 **MR. RIVERO:** No, Your Honor. I couldn't disagree more
16 with Mr. Roche.

17 **THE COURT:** All right. Well, it would be helpful if I
18 could look at the deposition transcript. So if you'd be kind
19 enough to -- to file it for the Court so -- so I can review it.

20 And if there is some case law for the Court to consider --
21 and I would also like the letter to be filed with the Court
22 because I have not -- I have not looked at that letter, either.
23 All right?

24 **MR. RIVERO:** We'll do so overnight, Judge. We'll do
25 that --

1 **THE COURT:** All right. So I do wish to advise you
2 we're starting tomorrow morning at 8:30, but it is a
3 naturalization ceremony that is remote.

4 So I will be here, but I'll -- I'll be on screen, and I
5 say that to you because you're free to come in and set up so
6 that we are ready to go by -- by 9:15. To the extent that the
7 ceremony goes a little bit over 9:00 o'clock, you're free to
8 come into the courtroom.

9 **MR. RIVERO:** Your Honor, just logistically, to the
10 extent that we normally remove everything, do we need to do
11 that tonight?

12 **THE COURT:** No, you do not need to remove -- because I
13 just need this laptop. So you can leave everything here, and
14 the -- the courtroom will be locked, and I'll see the parties
15 tomorrow morning at 9:15.

16 **MR. RIVERO:** Good night, Your Honor.

17 **THE COURT:** Okay. Have a nice evening.

18 **COURT SECURITY OFFICER:** All rise.

19 (Proceedings adjourned at 5:18 p.m.)
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CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript
from the record of proceedings in the above-entitled matter.

DATE: Tuesday, November 23, 2021

/S/ James C. Pence-Aviles

James C. Pence-Aviles, RMR, CRR, CSR No. 13059
U.S. Court Reporter

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IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
CASE NO. 9:18-cv-80176-BB

IRA KLEIMAN, as the personal representative
of the Estate of David Kleiman, and W&K Info
Defense Research, LLC,

Plaintiffs,

November 22, 2021
9:32 a.m.

vs.

CRAIG WRIGHT,

Defendant.

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TRANSCRIPT OF TRIAL DAY 14, AM SESSION
BEFORE THE HONORABLE BETH BLOOM
UNITED STATES DISTRICT JUDGE
And a Jury of 10

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ON BEHALF OF THE DEFENDANT: PAGE

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1 (Call to order of the Court, 9:32 a.m.)

2 THE COURT: Hi. Good morning to everyone. Let's go
3 ahead and call the case and we'll get started.

4 COURTROOM DEPUTY: Calling Civil Case Number 18-80176,
5 Ira Kleiman v. Dr. Craig Wright.

6 Counsel, please state your appearances for the record,
7 starting with Plaintiffs' counsel.

8 MR. BRENNER: Your Honor, if I -- I'll just introduce
9 everyone, if that's okay? Andrew Brenner on behalf of the
10 Plaintiffs. We have Vel Freedman, Kyle Roche, Samantha Licata,
11 Steve Zack, our client, Ira Kleiman, and Dorian Vela.

12 THE COURT: Hi. Good morning.

13 MR. BRENNER: Good morning.

14 MR. RIVERO: Your Honor, I'll do the same. Andres
15 Rivero, together with Amanda McGovern, Jorge Mestre, Dr. Craig
16 Wright, Michael Fernandez, Zalman Kass, our crack paralegal
17 Sarah Gonzalez, and Karl Reed, Your Honor, for Dr. Craig
18 Wright.

19 THE COURT: Good morning to each of you.

20 Go ahead and have a seat. I hope that everyone had a
21 nice weekend.

22 As I don't want to take time away from the jury, do we
23 have Dr. Klin?

24 MR. RIVERO: Yes, Your Honor.

25 THE COURT: All right. If the doctor will step

1 forward.

2 I do want to let you know that, as you have been
3 working feverishly to provide information to the Court, I do
4 appreciate the timely submissions. The Court has entered its
5 order denying the Defendant's motion that was pending before
6 the Court. That order was docketed this morning.

7 As well, I'm going to ask my law clerk to give to you
8 at this time -- although it's certainly premature for a charge
9 conference, but I did have an opportunity to review the
10 submissions regarding the jury instructions, as well as its
11 application to the Verdict Form.

12 The Court has prepared proposed instructions to the
13 jury, as well as the Verdict Form. So I'm going to ask Tal to
14 just provide that to you. Certainly there's no need to discuss
15 it at this time, but I did want to give you an opportunity to
16 review it and then at the appropriate time we can certainly
17 address any requests for amendments.

18 Are there any issues that we need to address before we
19 bring the jury in?

20 MR. BRENNER: No, Your Honor.

21 MR. RIVERO: Nothing from us, Judge.

22 THE COURT: All right, then. Let's bring the jury in.

23 (Before the Jury, 9:34. a.m.)

24 THE COURT: Good morning, Ladies and Gentlemen.

25 Please be seated. It's good to see each of you. I hope you

1 had a pleasant weekend and are ready to get back to work.

2 As you recall, we were in the questioning of Dr. Klin.

3 Dr. Klin, let me remind you, you were previously
4 placed under oath.

5 And we may continue. Mr. Brenner?

6 MR. BRENNER: Thank you, Your Honor.

7 CROSS-EXAMINATION [CONTINUED]

8 BY MR. BRENNER:

9 Q. Good morning, Dr. Klin.

10 A. Good morning.

11 Q. How are you?

12 A. I'm well. Thank you.

13 Q. Good.

14 Let's see if we can get through this. So I want to pick up
15 really quickly on something you said, I guess it was, Friday.
16 You had told the jury that your expert witness work made up .5
17 percent of your professional life. Do you recall that?

18 A. That was an estimate, yes.

19 Q. Okay. And what you said was -- the example to illustrate
20 that, is you said you had only taken -- this was the only case
21 you had taken since 2019. Do you recall testifying to that?

22 A. Yes. I recall. Yes. I believe so.

23 Q. Okay. And you know -- what you meant by that is you had
24 actually taken other cases in 2019. This is the only one you
25 took in '20 or '21, correct?

1 A. I think so, yes.

2 Q. And you know that because of the COVID pandemic that our
3 court system slowed down considerably in 2020 and '21, right?

4 A. Yes.

5 Q. Okay. Now, you also told the jury that you were never
6 involved in more than one or two cases a year. Do you recall
7 that testimony?

8 A. I don't believe I've been involved in more than one or two
9 cases a year. That's correct.

10 Q. Okay. So do you remember that in connection with your
11 expert report in this case that you provided me or my side a --
12 you provided your report? You remember that, right?

13 A. Yes.

14 Q. And then you provided some addendums. Do you remember
15 that?

16 A. Yes, I do. There were two addenda. There was one with the
17 publications. And the second one, I believe, you asked me for
18 a list of cases that I've been involved over a period of time.

19 Q. Right. And you provided us a list going back four years,
20 of the list of cases you were involved in. You remember that?

21 A. Yes. I don't recall the number of years, but I remember
22 providing you the list.

23 Q. Okay. And we can bring it up, if you want, but in 2016 and
24 '17 alone, you were -- in those two years alone, you were
25 involved in six cases. Does that sound right?

1 A. I don't quite recall that, but it could well be that those
2 cases extended over several years. Sometimes those cases
3 extend over a period of time.

4 Q. No. You actually -- you started four cases in 2016; isn't
5 that correct?

6 A. Maybe if you show me the list, I'll be able to tell you
7 what they are --

8 Q. Sure.

9 A. -- and what I ...

10 MR. BRENNER: Okay. If we could bring up -- Your
11 Honor, may I publish his list of cases?

12 THE COURT: You may.

13 BY MR. BRENNER:

14 Q. So in 2016 it's two cases, right?

15 A. Yes, sir.

16 Q. And 2017, is four cases, right?

17 MR. BRENNER: If I get could you to go to the next
18 page.

19 THE WITNESS: Yes. So there are four cases in --

20 BY MR. BRENNER:

21 Q. Now, just to be clear, as far as your experience testifying
22 in cases, in your professional capacity, you've given about 35
23 depositions, haven't you?

24 A. In a court of law or to attorneys who are asking me
25 questions? Because those are very different things.

1 Q. Okay. You have given -- you have testified at deposition
2 in your professional capacity about 35 times; is that correct?

3 A. I think that that sounds like a very large number. I don't
4 feel that I have been deposed 35 times in the past 30 years,
5 but it could well be.

6 Q. Okay. Well, let's look at what you told us before.

7 MR. BRENNER: Ms. McGovern, we're going to Page 12, 9
8 to 15.

9 MS. MCGOVERN: One minute, please.

10 MR. BRENNER: Here. Here's an extra copy. And let me
11 give you an extra copy. And now I got to get my own.

12 12, 9 to 15, Ms. McGovern.

13 (Pause in proceedings.)

14 MS. MCGOVERN: No objection.

15 BY MR. BRENNER:

16 Q. Dr. Klin, do you remember being asked the following
17 question and giving the following answer in your deposition in
18 this case?

19 "Okay. How many times have you testified at deposition in
20 your professional capacity as psychologist?"

21 "I have to estimate because I began engaging in some legal
22 cases back in the '90s. I would say that my estimation is
23 about maybe 35 cases or so."

24 Do you remember being asked that question and giving that
25 answer?

1 A. Yes.

2 Q. Okay.

3 A. I should just say that I have also been deposed many times
4 as a clinician on the request of the family or something to
5 that effect.

6 Q. Okay. All right. So I want to pick up where we left off
7 on Friday talking about the assessments. If you recall, we had
8 stopped, we were talking about the SRS, which is the self
9 reporting one. Do you recall that?

10 A. Yes.

11 Q. And we had gone through -- so this is the one where both
12 Ms. Watts and -- Ramona Watts -- excuse me -- Craig Wright's
13 wife -- and Dr. Wright each filled out their own questionnaire,
14 right?

15 A. Yes.

16 Q. Okay. And we have shown Ms. Watts' scores, and then it's
17 fed into a computer and the computer shoots out a score, right?

18 A. Yes. It's an online form that is scored by the portal --

19 Q. Right.

20 A. -- where you complete the form.

21 Q. So information comes directly from subject -- either
22 subject's wife or subject in this case, into a computer, a
23 computer shoots out a score, and then you guys receive the
24 score?

25 A. That's correct.

1 Q. Okay. So we've done -- we've shown Ms. Watts' scores.

2 MR. BRENNER: If we could bring up --

3 BY MR. BRENNER:

4 Q. So then Dr. Wright does the same thing. He fills out the
5 thing and we get scores for that, too, right?

6 A. It is -- when you use the SRS with an adult, that's
7 typically completed as part of self-report and by somebody who
8 knows that person very well --

9 Q. Right.

10 A. -- because the information can be very revealing about the
11 comparison of the two forms.

12 Q. Sure. And it's self-reported information, correct?

13 A. It is self-reported.

14 Q. By the subject? By the patient?

15 A. And it is reported about someone else by the person who
16 knows that individual well.

17 MR. BRENNER: If you could bring up the -- yeah, that
18 one. And highlight -- Your Honor, may I publish this from his
19 report?

20 THE COURT: You may.

21 MR. BRENNER: Thank you.

22 BY MR. BRENNER:

23 Q. So now all I've done -- before, we had the spouse report.

24 Now, with Dr. Wright, his scores, again, same cutoff, 76 is in
25 the severe range in this test?

1 A. 70 -- beyond 76, it's very likely the person have an autism
2 spectrum disorder. It is called severe within the context of
3 this rating scale.

4 Q. Sure.

5 A. Because social responsiveness is a normative trait. So
6 among the population, scores over 76, it's called severe and it
7 is compatible with a diagnosis of autism spectrum disorder.

8 Q. Right. And we don't have to go through each of them. Just
9 across the board, every score based on Dr. Wright's self-report
10 is both in the severe range and higher than the one -- is a
11 higher score than his wife reported about him; is that correct?

12 A. Yes, it is.

13 Q. Okay. So let's --

14 MR. BRENNER: So we could take that down.

15

16 Thank you, Ms. Vela.

17 BY MR. BRENNER:

18 Q. Let's go on to another assessment and that is the Vineland.
19 We talked about it briefly. But let's just go through the
20 basics of the Vineland. The Vineland was -- the Vineland
21 assessment in this case was run by Dr. Saulnier, correct?

22 A. Correct.

23 Q. Okay. And Dr. Saulnier conducted what is called a
24 semi-structured interview of just one person, correct?

25 A. Yes.

1 Q. And that one person was, again, Ms. Watts, correct?

2 A. It is correct.

3 Q. Okay. And then what Dr. Saulnier does is she -- it's not
4 an interview in the sense that it's a script that she's
5 reading. It's semi-structured because she's having a
6 conversation and she's trying to glean information then that
7 she'll later use to input into the scoring, correct?

8 A. Correct.

9 Q. Okay. That conversation we looked at before was about an
10 hour and 15 minutes. You remember that?

11 A. Yes.

12 Q. And in that hour and 15 minutes, Dr. Saulnier was getting
13 the information from Ms. Watts both as to the Vineland and as
14 to another test that was run, which was called the ADIR,
15 correct?

16 A. Those things were not done at the same time. Sometimes
17 they are done at the same time if there is -- well, there is a
18 little bit of an overlap across the two, but they are very
19 different interviews.

20 Q. Right. Well, they're both done in the same
21 hour-and-15-minute block, unless you know of another -- I think
22 the invoice said that was the only conversation. Do I have
23 that wrong?

24 A. I think you did.

25 Q. Okay. So the hour and 15 minutes was as to the Vineland?

1 A. Yes.

2 Q. Okay. Great. And we'll take a look at that in a second.

3 And again, so Dr. Saulnier takes notes. This one she can
4 take sticky notes, notes on a pad, and there's also a place on
5 the actual test that she could write on, right?

6 A. When you're assessing an individual, you can write on the
7 form, you can write on a notepad, you can write on a sticky,
8 you can --

9 Q. Right.

10 A. You can write in any way that you want in order to ensure
11 that you remember that information.

12 Q. Sure. And we know -- we talked about yesterday that after
13 she wrote them -- wrote all her notes, she gave them to you and
14 you later discarded them, right?

15 A. Yes. Once she's completed her entire report and passed
16 this on to me, and I had her text and I had all of the content,
17 I corroborated information and vetted information, I then
18 discarded her notes.

19 Q. And then what happens again, like the SRS, is when
20 Dr. Saulnier has input the answers -- and we'll go through it
21 in a little more detail, but again, that's put into a computer
22 or a portal and a score is generated, correct?

23 A. Yes. There are 65 items that are very telling. And
24 therefore, I used the SRS, this rating scale, in this
25 evaluation for several reasons.

1 One of them is to have a better sense of the range of
2 symptomatology that is identified through that rating scale, as
3 well as to look for any inconsistencies or anything that I
4 could actually gain information from my comparing the two SRSs.

5 Q. Okay. So in your answer, you're referring to the SRS.
6 We're actually talking about the Vineland.

7 A. You actually mentioned SRS a second ago.

8 Q. Okay. Then I got it wrong. In the Vineland -- I said:
9 "Just like the SRS," in the Vineland, after Dr. Saulnier inputs
10 the answers, it's put in a computer and the score is generated
11 by the computer?

12 A. Yes. Once she -- she gets narratives, examples,
13 illustrations of everyday observations. She takes all of that
14 information and then she maps onto specific items for which
15 there are scoring criteria -- and the scoring criteria are
16 defined in the manual. And so in order for it to be
17 standardized, then the clinician needs to map those onto the
18 scoring criteria. Then she scores the specific item and then
19 she summarizes those scores and she inputs them into the
20 computer.

21 Actually, nowadays, the software is better skilled. You
22 enter the scores and it generates all of the summary scores.

23 Q. Yeah. It's almost automated. Like you're putting it
24 online almost?

25 A. Correct.

1 Q. Okay. Great.

2 Now, do you know that the Vineland test -- we're on the
3 Vineland.

4 A. Yes.

5 Q. You know that the Vineland test -- the whole -- and this is
6 the Vineland-3, correct?

7 A. It is the Vineland-3, the one that Celine is actually an
8 author of.

9 Q. Dr. Celine is one of the authors of it?

10 A. Correct.

11 Q. Okay. The Vineland-3 test has 425 questions. Are you
12 aware of that?

13 A. I've never counted them. But since I've researched over
14 the years, I know that there are a lot of items, yes.

15 Q. And you know that a lot of those questions just don't make
16 a whole lot of sense to ask when you're scoring a 49-year-old.
17 Are you aware of that?

18 A. Oh, very much so. I was trained by the original authors,
19 Dr. Sara Sparrow and Dr. Don Cicchetti. There is something
20 called a basal and a ceiling. In order -- the Vineland goes
21 from babyhood all the way through adulthood.

22 Q. Right.

23 A. And so there are all of those hundreds of items. But in
24 order to shorten the load on a family, you start -- you need to
25 achieve a basal, which basically means if you're dealing with a

1 49-year-old, you're not going to start with babyhood items.

2 Q. Sure.

3 A. But you need to complete a certain number in order to
4 achieve a solid basal, and then you go up. And the same thing
5 goes for a ceiling. You don't ask adult questions from a
6 mother who is completing an interview of a baby. So there is a
7 basal and a ceiling and there are very specific directions on
8 how to complete that test.

9 Q. Right. Right. And you got my next question, which is:
10 Just like there are some questions that are too -- that are not
11 appropriate for a 49-year-old because they are geared to
12 younger children, the same would apply if you were doing the
13 test on a younger child. There's certain things that would
14 only apply to adults. Fair?

15 A. That is correct.

16 Q. Now, does 425 sound about right, or do you want me to bring
17 up the list of questions? Sound like we're in the ballpark?

18 A. I trust you because I gave you a copy of the form.

19 Q. Yes. Okay.

20 And do you know sitting here today how many questions
21 Dr. Saulnier used to score Dr. Wright out of the 425?

22 A. Well, Dr. Saulnier does workshops nationally and
23 internationally on that topic. So my very best assumption, but
24 also from talking with her, is that she achieved a basal and
25 she achieved a ceiling and she probed those items. And so I

1 wouldn't be able to know exactly the number of items, but I
2 trust her that these were the right number of items.

3 Q. Other than the fact that you just -- because you know her
4 and because of her background and experience, other than that
5 fact that you're just assuming she did it right, do you have
6 any estimate for how many of the 425 questions Dr. Saulnier did
7 not ask because they weren't appropriate? Do you have any
8 idea?

9 A. No. This is the first time in my life that I'm asked that
10 question. So no.

11 Q. Okay.

12 A. Because typically clinicians wouldn't find that relevant.

13 Q. Okay. So do you know what the basal is, the minimum amount
14 of questions that need to be asked?

15 A. You need to complete a certain number of items that are --
16 the items on the Vineland, they are organized developmentally
17 from babyhood all the way through adulthood.

18 Q. Right.

19 A. And so the directives of the test pose that you need to
20 complete a certain number of items consecutively that create a
21 range of skills for a particular age and beyond which you don't
22 need to go. So if you're asking me the question I know exactly
23 where she established the basal, no.

24 Q. Well, actually I didn't ask you exactly. I asked you: Do
25 you know of any estimate, any idea, any concept of how many

1 questions were actually scored in this case, in Dr. Wright's
2 case? Not generally. Dr. Wright. Do you know how many
3 questions Dr. Saulnier --

4 MS. MCGOVERN: Objection. Asked and answered.

5 THE COURT: Overruled.

6 THE WITNESS: Sitting here without the scores in front
7 of me, without -- not having talked with Dr. Saulnier since, I
8 wouldn't be able to tell you exactly the numbers, the number of
9 items that were scored.

10 BY MR. BRENNER:

11 Q. Okay. You keep saying: "Exactly" and my question is not
12 "exactly." My question is: Do you have any estimate or
13 approximation, or you just don't know?

14 A. I don't want to say a number that is not -- that is not
15 correct. But typically, we administer several tens of items.

16 Q. Okay.

17 A. And you might also recall that in my report, under the
18 Vineland section, there is a list of behaviors in each one of
19 the domains. Those are behaviors that we expect a person with
20 that cognitive level and age to be able to do, except that the
21 Vineland is not capacity. It's whether the person does it on
22 an everyday -- on an everyday fashion.

23 So there were several tens of examples in the areas of
24 communication, daily living skills, and in socialization that
25 were actually described in detail in the report.

1 MR. BRENNER: Okay. Let's bring up Klin at --
2 Dr. Klin's binder at Page 57, 58.

3 May I publish this to the jury?

4 THE COURT: You may.

5 MR. BRENNER: Thank you.

6 BY MR. BRENNER:

7 Q. So what I have up here is from your report. You recognize
8 this, right?

9 A. This is not from my written report. This is from the
10 computerized output of the scores of the Vineland.

11 Q. Fair enough. This is from the materials you provided us,
12 correct?

13 A. That is correct, yes. When you requested.

14 Q. Okay. So what we're looking at here is, each of the
15 domains, you sort of referenced them. Do you see that?

16 "Receptive, expressive, written," those are all domains in the
17 Vineland, correct?

18 A. Actually, they are not. There are three domains on the
19 Vineland: Communication, daily living skills, and
20 socialization; and for younger children, there is a motor
21 domain. Each one of those domains have three subdomains.

22 Q. Subdomains?

23 A. And so under "Communication," you have: "Receptive,
24 language, and communication, expressive and written." And then
25 under "Daily Living Skills," you have: "Personal, domestic,

1 community."

2 Under "Socialization," you have: "Interpersonal
3 relationships, play and leisure skills, and coping skills."
4 And then there is another section focused on maladaptive
5 behaviors.

6 Q. Let just do a couple examples, so that the jury understands
7 what I'm talking about when I'm saying some are scored and some
8 are not.

9 MR. BRENNER: Let's bring up just the community one,
10 please.

11 BY MR. BRENNER:

12 Q. Okay. So this is the community subdomain? Is community a
13 subdomain or a domain?

14 A. Community subdomain.

15 Q. Okay. Community subdomain.

16 So in the community subdomain on the Vineland-3 assessment,
17 there's a total of 58 questions. Do you see that?

18 A. Yes.

19 Q. And that sounds right to you, doesn't it?

20 A. It does.

21 Q. Okay. And where there's a slash, it means it wasn't scored
22 for Dr. Wright, correct?

23 A. Correct.

24 Q. So on this domain -- I'm trying to count it -- there's --
25 one, two, three, four, five, six, seven -- eight of the 58

1 questions were scored? Am I getting that right? Am I
2 interpreting the data right?

3 A. Absolutely.

4 Q. Okay.

5 A. For a 49-year-old, that should sound just right because
6 most adaptive behaviors are actually achieved in early
7 childhood. It's only in some domains that they remain to be
8 achieved later on. That's why the Vineland, over its history
9 since 1984, had been used primarily to document whether or not
10 the person had intellectual disabilities.

11 Now, in the case of a highly intelligent 49-year-old, the
12 number of items that you are going to administer is going to be
13 low. And what you're looking for is for things that should
14 have been acquired and have not.

15 Q. Exactly. So what you're looking for, what Dr. Saulnier was
16 looking for, was questions that would be applicable to the
17 assessment as it relates to Dr. Wright?

18 A. As it relates to a 49-year-old --

19 Q. Correct.

20 A. -- with high intellect.

21 Q. So for example -- and I don't mean to belabor this too
22 much, but there's questions that would apply to a baby like:
23 "Is the baby able to turn to a caregiver's voice?"

24 A. That's a very important item when you are evaluating a
25 two-year-old for autism.

1 Q. Correct. Hugely important. But Dr. Saulnier, in her
2 judgment, would say: "Well, that's not important for a
3 49-year-old," and I think we would all agree with her, right?

4 A. Yes, we do.

5 Q. Okay. And I'll just give you another example on the other
6 end of the spectrum. If we go to the interpersonal
7 relationships, that's one where there's 43 questions and
8 Dr. Saulnier scored all of them?

9 A. Correct.

10 Q. So let's keep that up one more second because you mentioned
11 it. For each question that scored, it's a 0, 1, or a 2,
12 correct?

13 A. Yes.

14 Q. Okay. A 2 means the person usually does what the thing is.

15 A. The person does it consistently.

16 Q. Consistently. It says: "Usually" in the key to the test,
17 right?

18 A. "Usually." "Consistently." It's something that whenever
19 that particular task appears in a person's life, the person
20 performs it consistently.

21 Q. Consistently. Okay.

22 And then the 1 is -- what the key says is that they do it
23 sometimes?

24 A. Correct.

25 Q. And the 0 is they do it never, right?

1 A. The 0 means that the person has not begun to show that
2 particular behavior sometimes, which is number 1.

3 Q. Right. So they get a 0. And the more 0's and 1's you get,
4 the more -- when -- ultimately, the way it's scored, there's a
5 more impairment the lower the score is, correct?

6 A. Yes.

7 Q. Okay.

8 A. So the Vineland is a normative skill like IQ, and you
9 expect from typically developing individuals that their IQ is
10 going to be commensurate with their adaptive skills. And by
11 definition, in autism, this is not so. Individuals are not
12 able to translate their cognitive abilities into real-life
13 skills in some domains more than in others.

14 Q. Okay. Now, we know -- I'm going to represent to you that
15 Dr. Wright -- excuse me -- Dr. Saulnier scored -- she didn't
16 score 195 of these. So she did use about 56 percent of them.
17 I could bring up the thing, but I'll ask you to accept my
18 representation, okay?

19 A. She will use whatever number is necessary for --

20 Q. In her judgment.

21 A. -- that individual at that age with that level of
22 intellect, depending on each domain.

23 In interpersonal relationships, I can see even from what
24 you're showing me the --

25 Q. Oh, you want to keep that up? I'm sorry.

1 A. -- is 0.

2 Q. Oh, you wanted that back up. I'm sorry.

3 MR. BRENNER: Keep that back up.

4 THE WITNESS: No. I just saw what you just showed me.

5 MR. BRENNER: Yeah. Let me put it back up for you
6 because I didn't realize you were talking about it.

7 MS. MCGOVERN: If we could please have the witness
8 finish his statement before the next question. It's hard for
9 me to follow the Q and A.

10 THE COURT: Yes. Let's let the witness complete the
11 answer. Sustained.

12 THE WITNESS: It looks from this that she wasn't able
13 to establish a basal and so she had to go all the way down.

14 BY MR. BRENNER:

15 Q. Okay. So can I take that down now?

16 Okay. I didn't realize you were going to talk about it.

17 MR. BRENNER: You can take it down, please.

18 BY MR. BRENNER:

19 Q. Now, did you at any time -- before you got up on the
20 witness stand today, did you at any time go and look at the
21 choices Dr. Saulnier made as to which questions in her judgment
22 she deemed appropriate to administer to a 49-year-old man? Did
23 you do that analysis?

24 A. Absolutely. Once -- every time she conducted a procedure,
25 for this -- for this consultation, we talked about what she

1 did, we both looked at the things that she did. And to be
2 fair, she also looked at things that I did.

3 Q. Okay.

4 A. Because as part of our best practice parameter evaluation,
5 we wanted to conduct this together so that we could come up
6 with a clinician best estimate, which is two individuals doing
7 at least a partial evaluation and then discussing any things
8 that require additional study, additional discussion. So
9 absolutely I took a look into all that she did and she did the
10 same for me.

11 Q. Okay. So if she did it, you've adopted it. It's -- you've
12 agreed with it, correct?

13 A. We discussed. And, in fact, there were things on the
14 Vineland -- there were -- that we felt were incomplete that
15 required yet some additional clarifications. And so subsequent
16 to the interview with the Vineland, Dr. Saulnier reached out to
17 Mrs. Watts and requested some additional information. By which
18 I mean that she requested additional examples in some domains
19 that would allow us to feel comfortable with the score that was
20 being given for given items.

21 Q. Okay. So one of the questions on the Vineland is: "Does
22 Dr. Wright show interest in children his age?" Included or not
23 included?

24 A. Interest in peers.

25 Q. No. That's a different question. Dr. Klin, please listen

1 to my question. "Shows interest in children his age."
2 Appropriate to ask a wife who met him when he was 40 -- about a
3 49-year-old man? Is it included or not included?

4 A. I'm so sorry to say this to you, but you are
5 misrepresenting -- this is a clinical document. Dr. Saulnier
6 would not ask Mrs. Watts if Dr. Wright was interested in
7 children his age because, at the time, he was a 49-year-old
8 man.

9 And so, as a clinician, she would say: "Does he show
10 interest in peers," in other individuals his age. The Vineland
11 is not typically done with individuals of that age.

12 Q. Okay. The Vineland is not typically done with individuals
13 that are 49?

14 A. Unless they have a disability.

15 Q. Okay.

16 A. Because that's absolutely critical.

17 Q. Okay.

18 A. In this country, if you need eligibility -- if you want
19 eligibility for special services, you need two scores. One of
20 them is an IQ and the other one is actually adaptive behavior.
21 Because the state will not provide you with services unless
22 both your IQ and your adaptive behavior is lower than 70
23 percent, which delineates the threshold for services.

24 MR. BRENNER: Let's just look at it. Let's look at
25 Page 41. And highlight --

1 BY MR. BRENNER:

2 Q. Okay. You know in the score sheet when she's asked a
3 question, it got a score. If it had an asterisk, it means it
4 wasn't administered. Do you remember that from looking at your
5 materials?

6 A. I'll take your word, yes.

7 Q. And we'll see that.

8 So this one, Dr. Wright gets sort of an impairment rating
9 because he gets a 1 for: "Shows interest in children his age,"
10 right?

11 A. Rephrasing to match the clinical reality of an expert
12 clinician using the Vineland in regards to a 49-year-old:
13 "Does he show interest in individuals his age?"

14 Q. Okay. So the question is changed for Dr. Wright to be
15 peers or individuals his age, not children, is that your
16 testimony?

17 A. Well --

18 Q. Doctor, is that your testimony?

19 A. It is my testimony that the essence of the Vineland is --
20 is a clinical tool that is used by an expert clinician who was
21 trained in that, in that case, the very author of the
22 instrument that is the most widespread measurement of adaptive
23 behavior in the world.

24 And so, yes, I trusted that she did not use those words in
25 the case of a 49-year-old man.

1 Q. Okay. Let's look at the first question on this blow-up
2 number one. This is another one that Dr. Saulnier included in
3 the scoring: "Looks at the face of parent/caregiver." She
4 included that one, right?

5 A. She has to establish a basal. The answer is yes.

6 Q. Okay. Let's go to another question on the Vineland. "Does
7 Dr. Wright take his own temperature when needed?" Do you think
8 Dr. Saulnier included that for a 49-year-old?

9 A. Yes.

10 Q. Okay. So let's look at that.

11 MR. BRENNER: That's at -- well, yeah. Let's look at
12 that. That's at Page -- I believe that's at Page 51.

13 Next -- it's question 51.

14 Oh, Page 47. I'm sorry.

15 May I publish?

16 BY MR. BRENNER:

17 Q. So 51 and 52 -- 52 is: "Takes his own temperature when
18 needed." He got a 0 on that. That's something he never does,
19 right, according to Ramona Watts?

20 A. That is something that he does not do even sometimes.

21 Q. Right. Is that different? The score, is that different
22 than never?

23 A. It is different from never because the concept of adaptive
24 behavior is not the acquisition of a skill. It's the usage of
25 that skill when that skill is needed consistently in everyday

1 life. And in real-life skills, knowing how to do things does
2 not allow you to navigate the demands of everyday life. You
3 need to be able to show that particular skill.

4 And with individuals with autism -- and I'm afraid that
5 this is very important for you to keep in mind -- that for
6 individuals with autism, almost by definition, they are unable
7 to translate sometimes their extreme strengths in some areas
8 into real-life skills.

9 That's part of the condition. And that's the reason why
10 expert clinicians like myself, we need to ascertain the
11 person's ability to do things that otherwise would appear silly
12 to others but represent a major challenge to the individual and
13 their families.

14 Q. Let's bring up Page 39 of your binder, so you and I can get
15 on -- at least agree on what the scoring is.

16 So 1 is sometimes and 0 is never or almost never. Is that
17 better?

18 A. That's perfectly fine.

19 Q. Okay. Great. So let's go back to where we were.

20 MR. BRENNER: And let's look at question 51 back on
21 the previous slide.

22 BY MR. BRENNER:

23 Q. "Plans for changes in weather before going out," and that
24 came out in the hour-and-15-minute interview. And that's
25 something Ramona Watts said Dr. Wright never or almost never

1 does, right?

2 A. Correct.

3 Q. Okay. Perfectly appropriate to ask a 49-year-old about a
4 49-year-old?

5 A. Absolutely.

6 Q. Okay. Great.

7 MR. BRENNER: Let's go to Page --

8 BY MR. BRENNER:

9 Q. There's another question: "Plays with others at outdoor
10 games with no score." 49-year-old or for children?

11 A. This is a question for children or for individuals who
12 actually have a social life.

13 Q. So you think it's appropriate to ask -- score this one for
14 Dr. Wright?

15 A. It is appropriate for a clinician to ask questions about a
16 person's social life in the context of autism because this is
17 an area of great disability. And unless you are able to elicit
18 that information, you will be surprised by how delayed
19 individuals with autism are, sometimes irrespective of their
20 high intellect.

21 Q. Dr. Klin, I didn't ask you about -- if it's appropriate to
22 ask about his social life. I asked if it's appropriate to ask
23 the wife of a 49-year-old man, in running the gold standard
24 assessment, whether he, quote: "Plays with others at outdoor
25 games with no score." Appropriate or not appropriate?

1 A. As a clinician, you're not reading that item. You're
2 scoring that item. And as a clinician, you are translating the
3 intent of the item to the clinical context that you are in.

4 So she didn't ask these questions. It's a semi-structured
5 interview. These are items that are scored. And therefore,
6 one needs to go through this and then take the narratives and
7 score that particular item.

8 Q. And she scored him a 0 for that, that the 49-year-old,
9 Dr. Wright, does not play -- he does not play with others at
10 outside games with no score. She gave that a 0. Do you want
11 to see that or do you remember that?

12 A. I'll take your word for it.

13 Q. Thank you.

14 Okay. So now we have an idea of the questions because --
15 we have an idea of the questions on the assessment, we know how
16 the score comes out, and now I want to talk to you about what
17 the score was for Dr. Wright. Okay?

18 So you found -- or once the information was input into the
19 computer, based on Dr. Saulnier's semi-structured interview,
20 you found that Dr. Wright performs the practical everyday tasks
21 of living worse than 99 percent of the adult population; isn't
22 that correct?

23 A. That is correct.

24 Q. Okay. And what that means -- you also found that he
25 functions worse than 99 -- excuse me -- he functions in social

1 situations worse than 99 percent of the adult population,
2 correct?

3 A. That is correct.

4 Q. You also found that in his day to day he listens and
5 understands worse than 99 percent of the population, correct?

6 A. If you are alluding to his score on the communication
7 domain, I would call your attention to the great discrepancies
8 across the three sub-domains.

9 And the same individual that can read Sophocles is also an
10 individual who doesn't understand non-literal speech, something
11 that is acquired around the age of three, four, and five.

12 Unless there is a clear understanding that this defines
13 autism, these enormous discrepancies amongst strengths and
14 extreme deficits, we would be failing our children,
15 adolescents, and adults, because we would be trying to
16 understand them on the basis of what we expect from typically
17 developing individuals. We wouldn't be able to document their
18 disabilities. We wouldn't be able to provide them with the
19 services that they need. So the answer is yes.

20 MR. BRENNER: Okay. Page 288, lines 10 through 17.

21 MS. MCGOVERN: Page -- could you provide the page
22 again, please?

23 MR. BRENNER: Oh, I'm sorry. 288 at --

24 MS. MCGOVERN: 288, and what are the lines?

25 THE COURT: That's for counsel, sir. There's no

1 question pending.

2 MS. MCGOVERN: What lines, please?

3 MR. BRENNER: I'm sorry, Ms. McGovern. 10 through 17.

4 (Pause in proceedings.)

5 MS. MCGOVERN: No objection.

6 BY MR. BRENNER:

7 Q. Dr. Klin, do you remember being asked this question and
8 giving the following answer at your deposition? This is my
9 question: "Dr. Wright listens and understands, expresses
10 himself through speech, and reads and writes worse than 99
11 percent of the adult population. That's what that means,
12 correct"?

13 Your answer: "Only with the proviso that this is not that
14 he can't. It says that that's the way that he behaves on his
15 day-to-day experiences."

16 Do you remember being asked that question and giving that
17 answer?

18 A. Yes.

19 Q. Thank you.

20 A. And that speaks to the nature of the test, the way that we
21 score, but even more importantly, the tremendous discrepancies
22 across the various different domains. You were describing the
23 communication domain, which consists of three sub-domains --

24 MR. BRENNER: Your Honor, can I object on narrative?

25 The question was: "Did I read that correctly?"

1 THE COURT: The question calls for a yes-or-no
2 response. If you need to explain your answer, sir, you may
3 certainly do so.

4 MR. BRENNER: Your Honor, may I have one moment?

5 THE COURT: Certainly.

6 (Pause in proceedings.)

7 MR. BRENNER: Okay. Thank you, Judge.

8 BY MR. BRENNER:

9 Q. Changing topics on you, Dr. Klin.

10 When you were here on Friday, you testified that people
11 with autism tend to be -- and I believe this is a quote --
12 "overly literal." Do you remember that?

13 A. Yes.

14 Q. And in your report, you describe Dr. Wright as being
15 "extremely literal." Do you remember that?

16 A. Yes.

17 Q. Okay. And to illustrate your point, you told three stories
18 on Friday. The first story you told, just so we can be on the
19 same page, was you had a client or a patient who had begun to
20 drive, had finally gotten the ability to drive. Do you
21 remember that?

22 A. Yes.

23 Q. And the individual was driving in a 25-mile-an-hour speed
24 zone and they were going 37. You remember that?

25 A. Yes.

1 Q. And the police officer pulled over your client -- was it a
2 he or she, by the way, so I get it right?

3 A. It was a he.

4 Q. Pulled over this gentleman and said: "Sir, do you realize
5 you were going 37 in a 25," and the gentleman said: "No. I
6 was going 45"?

7 A. Yes.

8 Q. Right. And that was an example of a trait of people that
9 have autism, that they are very precise with their language and
10 they want -- they are very focused on what the actual truth is,
11 right?

12 A. Yes. That was not actually an example of being overly
13 literal. That was an example of self-incrimination and being
14 truthful to a fault. Basically sticking to the facts even if
15 that's very self-incriminating.

16 Q. And then you gave a second example, this one as to
17 Dr. Wright in particular. You talked about an email he had
18 sent. I think he had sent it to Dr. Saulnier and she forwarded
19 it to you about the word "weird." Do you remember that?

20 A. Yes. The words "weird" and "have a sense of humor."

21 Q. Right. And correct me if I'm wrong, but I'm just trying to
22 summarize. What you said was he was very focused on the
23 literal meaning of the words that were used. Is that fair?

24 A. Not quite. He was -- he was focused on the etymological
25 history of that particular word, meaning the origins of the

1 word going all the way back to the Middle Ages.

2 Q. And he wanted to make sure when there was a question being
3 asked -- because I think it was an SRS question that had
4 "weird" on it, wasn't it?

5 A. Correct. Is considered weird by others and has a sense of
6 humor.

7 Q. And he wanted to make sure that he could expound on what
8 his understanding of the meaning and background of that word
9 was, right?

10 A. Wanted to make sure that he answered the question in the
11 way that we intended it.

12 Q. Right. Precisely and accurately?

13 A. That his understanding of the word was precise and
14 accurate.

15 Q. Yes. Okay.

16 And then the third example you gave was you had -- again,
17 if I get it wrong, you'll tell me -- in your one interview of
18 Dr. Wright, you had asked him -- you were talking about some
19 experiences as a child that he had. And you asked him if the
20 other kids at the playground had, quote: "Come after him." Do
21 you remember that?

22 A. Yes.

23 Q. And he wanted to make sure that -- he wanted to make sure
24 that he defined the term "come after." I'm holding your
25 testimony. Do you remember that?

1 A. He stated: "Define 'come after'."

2 Q. Right. And then you then explained what was going on and
3 you said -- you asked him: "Do you understand what is coming
4 after another person?" You were talking to the jury. You say:
5 "I'm sure you do." "But for him" -- you said for Dr. Wright:
6 "He gets very focused on the precise meaning of words."

7 That's true of Dr. Wright, correct?

8 A. Yes. But there is another clinical observation that I made
9 with that which is figures of speech, metaphors, irony,
10 sarcasm, humor are very hard for individuals with autism --

11 Q. Right.

12 A. -- because they usually mean something other than what you
13 are hearing.

14 So I remember in reading one of the transcriptions -- I
15 believe you were deposing him, and you said something to the
16 effect: "What's going on here?" And he answered you:
17 "Nothing's going on here. You're holding a piece of paper in
18 your hands."

19 Now, for some people, this might sound like he made that
20 comment in jest. But no. "What's going on in here," in order
21 for the other person to understand, you need to understand the
22 context and the intention of the other. He doesn't have that
23 ability.

24 Q. Correct.

25 A. That's "overly literal."

1 Q. By the way, it does sound like a question I would ask, but
2 it wasn't actually me deposing Dr. Wright. But that's okay.
3 But it does sound like something -- it does sound like me.

4 But I'm reading from your testimony from Friday. "Dr.
5 Wright is very focused on the precise meaning of words." You
6 agree with that?

7 A. Yes.

8 Q. "He's -- particularly the literal meaning" -- meaning the
9 literal meaning of words. He's very focused on that, right?

10 A. Yes.

11 Q. And the dictionary definition of the word?

12 A. Yes. Actually dictionary definitions, because his favorite
13 book is a collection of 22 volumes of the Oxford Dictionary.
14 And therefore, he studies words going back to their origins.

15 Q. Okay. And you told us that -- and this is again from your
16 testimony on Friday -- that that trait that he showed with you
17 in this example of the "come after him" and being very literal
18 and precise, is just how he is in business and other
19 situations. It wasn't somehow -- it wasn't done just for you.
20 That's how Dr. Wright is?

21 A. No. It was not contrived in my interview because this has
22 been a life trait, offered by all the informants, in -- not in
23 three examples, but in tens of examples.

24 Q. Okay.

25 MR. BRENNER: Your Honor, may I publish Exhibit P459

1 to the jury?

2 THE COURT: You may. It is in evidence.

3 MR. BRENNER: Thank you, Your Honor.

4 BY MR. BRENNER:

5 Q. Okay. Dr. Klin, this is in evidence. This is a --

6 MS. MCGOVERN: Objection, Your Honor. This issue goes
7 directly to something I think we should discuss sidebar before
8 Plaintiffs dive into this with Dr. Klin.

9 MR. BRENNER: Can we publish it not to the jury but so
10 the Judge can see it?

11 THE COURT: All right. Let me see it, 459, and then
12 come sidebar.

13 (At sidebar on the record.)

14 MS. MCGOVERN: This is Amanda for the --

15 THE COURT: I'm sorry? A juror has to go to the
16 bathroom.

17 Okay. Let me just address that and then we can
18 address it on the record.

19 (End of discussion at sidebar.)

20 THE COURT: Ladies and Gentlemen, let's go ahead and
21 take a 10-minute recess.

22 (Jury not present, 10:22 a.m.)

23 THE COURT: I just want to advise each of you that we
24 have a juror that just needs to take some frequent restroom
25 breaks today. So we're certainly going to accommodate that

1 request.

2 All right. Yes. Ms. McGovern?

3 Go ahead and have a seat, everyone.

4 MS. MCGOVERN: Your Honor, I raised the objection
5 before. Plaintiffs are going into specific evidence that's
6 been raised in this case. We were very, very careful with
7 Dr. Klin before he got on the stand not to invade the province
8 of the jury with respect to credibility. It is a direct ruling
9 that you have made with respect to his testimony.

10 We've circumscribed our direct examination expressly
11 to eliminate any possible sort of statements that would invade
12 that province, as well as your ruling.

13 And by raising this -- what appears to be a
14 communication with Dr. Wright and somebody else, not sure where
15 the Plaintiffs -- where Mr. Brenner is going with it, but it is
16 going to directly open the door with respect to issues of
17 credibility, unless I'm mistaken.

18 THE COURT: Why don't you make a proffer, Mr. Brenner?

19 MR. BRENNER: Can I excuse Dr. Klin?

20 THE COURT: Yes. Dr. Klin, if you will step outside.
21 We'll be with you in 10 minutes, sir.

22 THE WITNESS: Ten minutes?

23 THE COURT: Yes, sir.

24 (Pause in proceedings.)

25

1 THE COURT: And if we can provide that exhibit.

2 MR. BRENNER: Do you want 459 back up?

3 THE COURT: Yes. Thank you.

4 MR. BRENNER: Can you bring 459 back up for the Court?

5 Ms. Vela, can you bring 459 back up for the Judge?

6 THE COURT: All right. And Mr. Brenner, why don't you
7 make a proffer as to the use of this.

8 MR. BRENNER: What I'm going to do -- so what his
9 testimony was -- and this has nothing to do with the motion in
10 limine, but I'll explain -- or the Daubert order.

11 His testimony is -- as you just heard again, is Dr.
12 Wright says what he says, he means what he says, he's very
13 literal. Right? So now I'm going to ask him just to apply his
14 opinion to the facts of this case, and I'm just going to show
15 him documents where Dr. Wright is very literal.

16 So in this one he calls Dave Kleiman his business
17 partner. And then there's another exhibit where he says -- I
18 mean, I'll walk through the exhibits that I'm going to use.

19 176, Your Honor, is again where Dr. Wright says:
20 "This is an idea that I had developed with my business
21 partner."

22 Then 122 is a document where Dr. Wright says a few
23 things. "Dave and I had a project in the U.S. He ran it
24 there. And the company there ran -- the company" -- excuse
25 me -- "the company he ran there mined Bitcoin."

1 And then maybe the last one is 733, which is the
2 Thanksgiving dinner, where he says: "We did partner."

3 So he's made -- Dr. Klin, through direct -- I didn't
4 bring this up -- has sort of tried to explain Dr. Wright's
5 speeches, what he means when he says things. And so I'm going
6 to hold him to that.

7 I'm not asking him whether Dr. Wright was credible on
8 the stand because I wouldn't ask that, and that's out per Your
9 Honor's Daubert order. So I'm not even touching that.

10 And one more thing I asked him right before this line,
11 which is: "This thing you found about him in your examination,
12 this is how he is always." So the jury's entitled to know
13 that, yes, he's literal always.

14 So when he's constantly calling Dave Kleiman his
15 business partner, the jury may infer from that that he actually
16 means that Dave Kleiman was his business partner.

17 And since the jury's out, I'm going to tell you the
18 next subject because there may be an objection and we can deal
19 with that. But I'll let Ms. McGovern respond on that if you
20 want.

21 THE COURT: All right. Ms. McGovern?

22 MS. MCGOVERN: Your Honor, had we done this in the
23 direct examination, there would have been an absolute
24 objection. It would have been sustained, properly sustained
25 under your ruling.

1 This goes directly to what -- is asking Dr. Klin to
2 comment on the evidence in this case. Dr. Klin is being
3 presented to -- the testimony that's being presented was
4 circumscribed by the Court not to invade the jury's
5 understanding of the evidence, interpretation of the evidence,
6 with Dr. Klin opining on what Dr. Wright might have meant.

7 And specifically -- and I say this specifically --
8 there was reference in connection with a Daubert motion to
9 questions regarding whether or not Dr. Wright, when he said
10 certain things in this case, was acting with an intent to
11 deceive. If, in fact, the Plaintiffs' counsel is allowed to
12 hair-split with respect to whether or not this term "partner"
13 was meant to be literal and we are not then allowed to go into
14 the area of what happens with somebody with this disability in
15 terms of being misunderstood as being deceitful and nefarious,
16 which is at the heart of this case, then the entire Daubert
17 ruling has been sort of thrown out. And we certainly would
18 have asked Dr. Klin different questions, but we were very
19 careful not to do so.

20 This is an end run around your order, Your Honor. It
21 is not for Dr. Klin to opine on what Dr. Wright might have
22 meant when he said years ago referring to Dave Kleiman in the
23 context in which he did.

24 And, in fact, his testimony doesn't go to that issue.
25 They're opening up the door with respect to the evidence that

1 they have. It's right on their timeline. This is what they're
2 going to be arguing to the jury in closing argument and it's
3 inappropriate. The objection should be sustained. The ruling
4 should stand as it was. This isn't a do-over. We've already
5 completed our direct examination of Dr. Klin and this is just
6 inappropriate.

7 THE COURT: Mr. Brenner, anything further, sir?

8 MR. BRENNER: I was just to going to read to Your
9 Honor what the order was, but if you have it.

10 THE COURT: I'll well aware of my order.

11 MR. BRENNER: Okay. Nothing on that particular
12 subject. I had one more category.

13 THE COURT: All right. Well, let me say that Dr. Klin
14 has already testified that he believes that Dr. Wright is
15 literal in his interpretation and his communication.

16 And I don't believe that the fact that there are other
17 documents in this case in which the Plaintiff intends to make
18 argument that there is a literal interpretation with regard to
19 a literal communication really has any relevance with regard to
20 Dr. Klin's testimony. He's already testified to that.

21 But I do agree with Ms. McGovern that what it tends to
22 do is it tends to make an end run around the efforts to show
23 that he had an intent to deceive or no intent to deceive. And
24 that's where I really drew the line with regard to this
25 witness.

1 You are free to ask him with regard to anything that
2 may have been in the deposition or what he reviewed, but
3 certainly this exhibit, while it's admitted into evidence, it's
4 not appropriate with this witness. The objection is sustained.

5 MR. BRENNER: And I understand Your Honor's ruling.
6 Just to be clear, I wasn't intending an end run, but I
7 understand Your Honor's ruling and we'll move on from that.

8 THE COURT: Well, I think you were using it that --
9 and he told the truth and that's what he meant and that's
10 exactly what he intended to say in his communication, and you
11 already have the testimony.

12 MR. BRENNER: I wasn't going to ask that. I wish
13 Dr. Klin would just say: "Yes. That's what it says," but he
14 doesn't do that. I was not going to ask that question.

15 THE COURT: The exhibit is not appropriate with this
16 witness.

17 What's the next issue?

18 MR. BRENNER: The other thing is a series of
19 questions, Your Honor, where -- and we covered this in his
20 deposition, where -- to just get him to explain to the jury
21 that even if his diagnosis of autism is correct, there's
22 nothing about that diagnosis that would cause Dr. Wright to do
23 the things we have put into evidence that he did.

24 So, for example, I would ask him to assume that the
25 jury has heard evidence that Dr. Wright has altered or forged

1 documents. I want him to assume it for the purposes of my
2 questions. He doesn't have to agree or disagree. But if
3 that's in fact true, nothing about autism would cause a person
4 to do that. That's one question.

5 Then there would be the same question for submitting
6 fraudulent documents. There would be the same question for
7 filing declarations that contradict stuff and then filing
8 contradictory declarations, which Your Honor saw in the two
9 declarations in your Court and in the Australian Court. So
10 that's the next module.

11 MS. MCGOVERN: Your Honor, this is exactly the same
12 situation that we faced with the first category. And let me
13 just lay out the way it could have gone had we not followed
14 your ruling and published things in front of the jury to
15 insinuate some sort of intent. It could have gone like this:
16 I could have asked Dr. Klin about why it could be misunderstood
17 in a declaration when Dr. Wright is saying certain things. I
18 could have presented certain emails after 2011 when he's
19 referring to "partner" before then. I could have taken all of
20 the evidence on that timeline and I could have put it in front
21 of Dr. Klin and I could have used that expert testimony to
22 essentially explain away what is in the province of the jury to
23 determine. That's what they're doing here with respect to the
24 evidence.

25 Dr. Klin has absolutely no expert opinion with respect

1 to Dr. Edman's opinion. It's not appropriate. It's an end
2 run. And it would require us to come back -- essentially
3 ignore your Court's order and go back and redirect Dr. Klin on
4 each and every piece of evidence presented to him so that we
5 can explain, well, how would autism potentially affect the
6 context in which these statements were made.

7 It's my understanding, Your Honor, that that was ruled
8 on a long time ago and it's the reason that we presented the
9 testimony in his direct the way we did it.

10 THE COURT: Anything further?

11 MR. BRENNER: My only further thing is if this is not
12 relevant, then we would say that Dr. Klin's testimony is not
13 relevant and we would move to strike it at the conclusion.

14 This is asking an expert witness a hypothetical,
15 applying it to the facts of the case, and asking how his
16 opinion applies to those facts. It's -- I have nothing
17 further. I think this is classic cross-examination.

18 THE COURT: All right. The purpose of this witness is
19 to educate the jury on Dr. Wright's abilities, the effect of
20 autism on his ability to act both in and outside the courtroom.
21 That was the testimony that we heard.

22 The questions that Mr. Brenner wants to ask with
23 regard to how it affects other abilities -- and it's perfectly
24 appropriate to give a hypothetical to an expert. I agree that
25 it's directly relevant because it educates the jury as to the

1 extent of his autism and how the autism affects certain
2 actions. So it is relevant. The objection is overruled.

3 MR. BRENNER: And that will be the end of the cross.

4 THE COURT: I want to give you an appropriate break.
5 Let's take a five-minute stretch break, and then we'll continue
6 with the questions.

7 MR. BRENNER: Thank you, Judge.

8 (Recess from 10:33 a.m. to 10:40 a.m.)

9 THE COURT: All right. Welcome back. Dr. Klin, come
10 on forward.

11 Is there anything we need to address before we bring
12 the jury in?

13 MR. BRENNER: Nothing from the Plaintiffs.

14 Oh. Nothing from the Plaintiffs?

15 Nothing from the Plaintiffs.

16 MR. RIVERO: (No verbal response.)

17 MS. MCGOVERN: Your Honor, could I make one request?

18 Dr. Klin has a very important call for him and his
19 center at noon. So if Mr. Brenner is not going to be done --

20 MR. BRENNER: It's literally four questions.

21 MS. MCGOVERN: Okay.

22 THE COURT: I guess it all depends on the redirect.

23 MS. MCGOVERN: I'll settle.

24 MR. BRENNER: Yes.

25 (Before the Jury, 10:43 a.m.)